In the Supreme Court of the United States

OCTOBER TERM 1933.

No. 2.

JOHN FACTOR,
Petitioner,

v.

H. C. W. LAUBENHEIMER, United States Marshal, and GODFREY HAGGARD, His Britannic Majesty's Consul General,
Respondents.

APPENDIX TO BRIEF OF PETITIONER ON REARGUMENT.

NEWTON D. BAKER,
RUSH C. BUTLER,
S. O. LEVISON,
G. GALE GILBERT, JR.,
ALLAN J. CARTER,
Counsel for Petitioner.

FOREWORD.

The Court having referred counsel to the "available diplomatic correspondence relating to Article X of the Treaty of 1842 and the Treaty of 1889," counsel have printed in this Appendix, for the convenience of the Court, all such correspondence, either supplied by the State Department or found by them in their examination of the files. Much of this correspondence obviously has no relation to the questions involved in this case. In the Brief, to which this volume is an Appendix, reference has been made to the principal documents which seem to throw any light upon the questions here in issue, and to facilitate the use of this Appendix, counsel have, in addition to a chronological index of all the documents printed herein, separately listed the documents referred to in the Brief of Petitioner on Reargument in the order of reference, and have indicated the pages of this volume on which such papers are to be found.

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Note from Forsyth to Fox, Dated March 20, 1839

Henry S. Fox, Esquire,
&c., &c., &c.

Department of State,
Washington, 20 March, 1839.

Sir—

I have the honor to acknowledge the receipt of the note which you addressed to me on the 15th ultimo, enclosing copies of a correspondence which has lately passed between the Governor of the State of Vermont, and the Governor General of Her Britannic Majesty's North American Possessions, by whom it had been immediately communicated to you, together with other papers, in relation to several outrages recently committed in the Province of Lower Canada, the perpetrators of which,—some of whom were recognised, as appears by the evidence transmitted with your letter,—are known to have taken refuge in the State of Vermont; and claiming the exercise of the President's authority,—a demand of a similar character having already been made without success upon the Executive of that State,—for the arrest and delivery to Her Majesty's Provincial Officers, for the purposes of public justice, of the criminals who have been identified.

I have likewise received your note of the 18th instant, together with its enclosures, making a like application in relation to George Holmes, *alias* George Fly, of Sorel, who is charged with having committed a most atrocious murder at Kamouraska, in the District of Quebec, and who has since escaped into Vermont.

Having submitted your communications to the President for his consideration, I have received his directions to convey to you the expression of his strong feelings of regret and abhorrence at the perpetration of these border violences for the gratification, as it would seem of personal hatreds and malignity, and of his sincere desire to see them effectually prevented by adequate punishments. I am also instructed to inform you, that the stipulations of the 27th article of the treaty of 1794 between the United States and Great Britain, by which it was mutually agreed that all persons charged with murder or forgery, committed within the jurisdiction of either party, and seeking an asylum in the dominions of the other, should on requisition be delivered up to justice,—having unfortunately expired by the terms of the limitation of that instrument, the President is left without authority to comply with the requests now made. Since the period referred to, applica-

tions of the nature of those just preferred, whether made by the one or the other Government, have shared a common fate—the surrender of the criminal has been declined. It is believed, however, that a disposition has long existed on the part of both Governments to come to an understanding in regard to this matter, although the attempts which have been made with that view have failed of success from incidental causes, to which it is now unnecessary more particularly to advert. The President, impressed with a sense of the propriety and importance of a definitive agreement, thinks the present a favorable opportunity to effect a conventional arrangement for the mutual surrender of fugitives from justice. I take great pleasure in acquainting you, accordingly, with the readiness of this Government to open a negotiation upon this subject; and I cannot but presume that no serious difficulties will be encountered, under present pressing circumstances, in bringing it to a prompt and satisfactory conclusion.

In the mean time, instructions have been given to the Attorney of the United States for the District of Vermont, immediately to arrest and prosecute all persons accused of having gone from within the limits of the United States into Lower Canada, who, after committing therein the crime of arson and other acts of violence, have fled into that State for the purpose of eluding detection and punishment, under the hope that, although the existing laws may not afford the means of inflicting an adequate punishment for these offences committed in Canada, they may be found sufficient to authorize a punishment that will deter all persons who have sought refuge in the United States from crossing their borders to commit crimes beyond, yet so near, the boundary line as to enable them to escape arrest by immediately recrossing it.

I avail myself of this occasion to renew to you the assurance of my distinguished consideration.

JOHN FORSYTH.

Note from Fox to Forsyth dated August 12, 1840

Rec. 14, Aug.
Mr. Derrick

Washington
August 12, 1840.

The Hon'ble John Forsyth
&c.——&c.——&c.—

Sir:

Her Majesty's Government have had under their consideration the contents of an official Note which you addressed to me by direction of the President on the 20th of March 1839, in which, after a statement of the legal and constitutional obstacles that prevented the Federal Government from delivering up to justice in the British Provinces certain malefactors, who, after committing atrocious crimes in Canada had fled into the neighboring States of the Union,—a proposal was made on the part of the United States Government, to conclude with the Government of Great Britain a formal convention for the future mutual surrender of criminals under similar circumstances on either side.

Her Majesty's Government are desirous of now entering upon the negotiation of such an Agreement; and I am accordingly directed by Her Majesty's Government to submit to the consideration of the President the accompanying Draft of a Convention, the stipulations of which provide for the mutual surrender to justice, of British subjects, and of Citizens of the United States, who may stand charged with having committed within the British Possessions in North America or within the Territories of the United States, the crime of murder, and other specified felonies, and who shall have taken refuge either within Her Majesty's Possessions in North America, or within the Territories of the United States; and also for the mutual surrender of military deserters.

Her Majesty's Government will be gratified to learn that the stipulations of this Draft of Convention, which appear to Her Majesty's Government to provide effectually for the objects aimed at by the Two Contracting Parties, are approved of and accepted by the Executive Government of the United States.

I avail myself of this occasion to renew to you the assurance of my distinguished consideration.

H. S. Fox.

Refers to Secretary's official note of 20th March, 1839, and submits a Draft of Convention providing for the mutual surrender of certain persons guilty of certain crimes, to the State within whose limits the offence shall be committed; and, also, for the mutual surrender of military deserters.

Fox's letter of August 12, 1840.

DRAFT

Convention between Great Britain and the United States of America.

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, and the President of the United States of America, having resolved to conclude a Convention for the mutual surrender of British Subjects and of Citizens of the United States who may stand charged with having committed within the British Possessions in North America or within the Territories of the United States the crimes hereinafter enumerated, and who shall have fled from the Laws of their respective Countries and shall have taken refuge either within the aforesaid British Possessions of North America, or within the Territories of the United States, and also for the mutual surrender of military deserters the High Contracting Parties have, for this purpose named as their Plenipotentiaries, that is to say;

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland &c.—&c.—and the President of the United States of America by and with the consent of the Senate thereof—&c.—&c.

Who after having communicated to each other their respective Full Powers, found to be in due form, have agreed upon and concluded the following Articles.

Article I

It is hereby stipulated and agreed, that from and after the ratification of the present Convention, all British Subjects who shall stand charged by deposition upon oath made before the constituted authorities in the British Possessions in North America with having committed the crimes of Murder, Malicious Maiming of the person, assault with intent to murder or maim, Rape, Burglary, Arson, Burning of Boats or Vessels of any description, and Forgery; within the said Possessions, and who shall have fled from justice, and shall have taken refuge within the United States; and all Citizens of the United States, who shall stand charged by deposition upon oath made before the authorities of the

United States, with the afore-mentioned crimes of Murder, Malicious maiming of the person, assault with intent to murder or maim, Rape, Burglary, Arson, Burning of Boats or Vessels of any description, and Forgery; and who shall have fled from Justice, and shall have taken refuge within the British Possessions in North America, shall, on requisition made by one of the Governors of the British Provinces in North America to the Government of the United States on the one hand, or on requisition made by the Government of the United States to one of the Governors of the British Provinces in North America on the other hand, be delivered up to the requiring Party to be dealt with according to Law.

ARTICLE II

The High Contracting Parties further agree that all Persons enrolled in the Military Service of the British Crown, or in that of the United States, and who shall desert therefrom, and shall take refuge within the United States, *or within the British possessions in North America,* respectively, shall, when demanded in the manner prescribed in the preceding Article, with respect to Persons charged with criminal offences, be delivered up by the Party in whose Territory they shall have taken refuge, to the Party making the demand.

ARTICLE III

It is agreed that all expences which may be incurred in the apprehension and surrender of a Fugitive claimed in virtue of either of the two preceding Articles shall be defrayed by the Party who shall have made the requisition and to whom the Fugitive shall have been given up.

ARTICLE IV

The High Contracting Parties reserve to themselves the right of putting an end to the present Convention, whenever either of them shall think fit so to do, upon giving Six Months previous notice to that effect.

ARTICLE V

The present Convention shall be ratified and the ratifications shall be exchanged in .....
within a period of ..... Months .....

In witness whereof &c.—&c.—

Note from Fox to Webster (Acting Secretary of State), dated May 12, 1841

Rec'd May 13th.
Mr. Derrick

Washington, May 12th, 1841.

Fletcher Webster, Esquire,
Acting Secretary of State.

Sir:

I have the honor to acknowledge the receipt of your letter of the 10th instant, in which, referring to the case of an individual named Charles F. Mitchell, charged with having committed the crime of forgery in the State of New York, and who it appears has sought refuge in the British Province of Canada,—you request, by desire of the President, the intervention of Her Majesty's Authorities, for apprehending the aforesaid fugitive from justice and delivering him over to the Authorities of the State of New York.

I lose no time in transmitting a Copy of your letter to His Excellency the Governor General of British North America, who I have no doubt will be desirous of lending whatever assistance the circumstances of the case may permit of, for the furtherance of the ends of Justice. But I feel uncertain how far Her Majesty's Colonial Authorities will find themselves at liberty to comply upon this occasion with the wishes of the President, considering that recently, in similar or more aggravated cases, when British Subjects charged with Felony and Murder have sought refuge in the United States, it has been judged and decided that neither the Federal Government, nor the respective State Governments, possess the power of reciprocally Surrendering such fugitive criminals to British justice.

With reference to this important matter, I shall have the honor upon an early occasion of requesting the attention of the Secretary of State to an official Communication addressed by me to Mr. Forsyth in the Month of August of last year, wherein I submitted the Draft of a Convention which Her Majesty's Government are desirous of concluding with the Government of the United States, for the mutual delivery of fugitives from Justice.

I avail myself of this occasion to offer to you the assurance of my distinguished consideration.

H. S. Fox.

Note from Ashburton to Webster dated August 9, 1842

Washington, 9th August, 1842.

The Hon'ble Daniel Webster
&c. &c. &c.

Sir,

By the 3rd article of the Convention which I have this day signed with you there is an agreement for the reciprocal delivery in certain cases of criminals fugitive from justice, but it becomes necessary that I should apprize you that this article can have no legal effect within the Dominions of Great Britain until confirmed by Act of Parliament. It is possible that Parliament may not be in session before the Exchange of the ratifications of the Convention, but its sanction shall be asked at the earliest possible period and no doubt can be entertained that it will be given.—In Her Majesty's territories in Canada, where cases for acting under this convention are likely to be of more frequent occurrence, the Governor General has sufficient power under the authority of local legislation, and the Convention will there be acted upon, so soon as its ratification shall be known, but it becomes my duty to inform you of the short delay which may possibly intervene in giving full effect to it where the confirmation by Parliament becomes necessary for its execution.—

I beg, Sir, to renew to you the assurance of my high consideration.

ASHBURTON.

Dispatch No. 55, Upshur to Everett dated Aug. 8, 1843

Department of State,
No. 55. Washington, 8th Augt., 1843.

Sir:

You are probably apprized that my appointment as Secretary of State, *ad interim*, has been made permanent.

Your despatches Nos. 39, 40, 41, 42, 43, and 44, are received.

* * * * *

tion of the present high duties upon others, would prove greatly advantageous to this country. We wish to obtain a new market for our wheat and flour; for our corn

and corn meal; for our pork and our beef. We believe that England may admit all these articles into her markets with advantage to herself as well as to us. If there be any thing in her peculiar systems to forbid this, then we desire to know whether it is or is not in our power to offer her an acceptable equivalent for such a concession. Free conversations upon these points, understood by both parties as informal and not binding on either, would remove all difficulty from the subject, by ascertaining whether it is or is not probable that a treaty of any kind can be made. If there be a well-founded probability that England will accept such terms as we shall feel authorized to offer, this Government will not feel any hesitation in making the first advance toward the accomplishment of so desirable a purpose.

You will therefore take occasion to present these views to Lord Aberdeen. If he should meet you in a proper spirit, you will have no difficulty in ascertaining whether it is or is not worth while to prosecute the subject farther. The one way or the other, the present solicitude of this country in regard to it will be relieved.

The construction which Lord Aberdeen seems disposed to give to that clause of the treaty which provides for the extradition of fugitive felons, strikes me as somewhat extraordinary. He does not, I presume, consider the slave as free *ab initio*, and by a paramount right. This would be in opposition to the whole course of English policy upon the subject; for, until very recently, England herself was a slave holder. Even now she has a system of apprenticeship, which is a clear infringement of such paramount right, because, if the right exists at all, it exists without limitation and to every intent. It is true that the slave becomes free from the moment that he touches the soil of England; the fact that he touches it, *gives* him his freedom, and is not a mere recognition of a preëxisting right. Lord Aberdeen cannot therefore, upon the principles of his own Government and laws, excuse a slave for committing a robbery, upon the ground that he committed it as a means of asserting his freedom, because he had no right to his freedom until he reached British ground.

But even if he had such right, the laws of England do not allow the principle involved in Lord Aberdeen's construction. It certainly would not be asserted in any English court that an act having all the characteristics of felony would not be felony if it were committed with a view to assert some clear right of the party on some other point.

Lord Aberdeen does not appear to have drawn the distinction between the *intention* and the *motive* of the act. If the party designs to rob, the *animus* exists; the courts never enquire what ulterior object he expects to accomplish by it. A man is as much entitled to his life as he is to his freedom; the motive to preserve life is not less strong than the motive to acquire personal liberty. And yet, by the English law, a man who steals food to save him from starvation is a felon. Why, then, should not a slave who steals a horse or a boat to aid him in his escape, be equally a felon? The only enquiry is, *did he mean to steal?* The use which he intended to make of the stolen property does not enter into the judicial estimate of the act. The policy of this rule is obvious. It would be very difficult if not impossible to convict any one of the crime of theft, if he were allowed to plead that he committed the act in order to attain some justifiable object, distinct from, and independent of, the act itself. In nine cases out of ten some such motive might be made to appear with sufficient distinctness to excite and to justify the sympathies of the jury, or to create a doubt in their minds.

This view of the subject derives additional strength from the language of the treaty. The 10th article provides that persons guilty of certain specified crimes, of which robbery is one, shall be delivered up "upon such evidence of criminality as, according to the laws of the place where the fugitive or person charged, shall be found, would justify his apprehension and commitment for trial, if the *crime* or *offence* had there been committed." Now, in the case before us, the *crime* or *offence* is *robbery*; nothing is said of the motive with which it is committed, nor of the object sought to be attained by it. The sole question is, whether there is or is not sufficient *evidence* to warrant the commitment of the party; and this is to be determined by the laws of the country in which he may be arrested. If, therefore, the laws of England would justify a robbery because it was committed in assertion of some independent right of the party, actual or supposed, Lord Aberdeen is right; otherwise he is wrong. There is no doubt as to the decision which the law of England would pronounce upon the point.

But it is impossible, for other reasons, that this Government can ever sanction such a construction. The constitution of the United States recognizes domestic slavery as a legitimate institution, and expressly assures to the master an absolute right of property in the slave. This right is inconsistent with a right in the slave to his liberty.

Even, therefore, if the principle were allowed that the motive could justify the act, the motive cannot be supposed to exist in the case under consideration. As the slave has no right to his freedom, he cannot justify a felony in asserting a claim to that right. On the contrary, in contemplation of our constitution, the very act of absconding is a wrong done to the master; and of course the doctrine asserted by Lord Aberdeen would, in this view of the case, justify one wrong because it enabled the party to commit another. And where is the principle to stop? If it be carried to the extent of justifying one crime, why may it not justify a thousand? And why not a series of them, each affording the means of committing the next? The first crime may not put it in the power of the felon to accomplish his justifiable object, but it may enable him to commit another which will. And so to any imaginable extent.

It is quite evident that if this doctrine should prevail, the strongest possible inducement will be held out to the absconding slave to commit the most atrocious crimes. He will *steal* or rob, as a matter of course; perhaps, neither a boat, to convey him by water, nor a horse, to carry him by land; but clothes to wear, and money to purchase food, are equally necessary to enable him to escape. And why should he not also commit murder, in order to conceal his flight, or to prevent pursuit? I know not why a simple robbery, more than any other crime, should be justified, because its object is to obtain the personal freedom of the criminal. As well might the prisoner in a common jail or penitentiary be justified in killing his keeper with the same motive. He is confined by the mandate of the law under the constitution; and the slave is deprived of his personal freedom by the mandate of the constitution itself. It is obvious that a principle like this would overthrow all the securities which society could derive from the best devised penal code.

But there is no *equality* in the rule. There is not, in England, any class of persons analogous to the slaves of the United States. If, therefore, the rule should prevail, it will in effect exempt three millions of people in the United States from the operation of the treaty, without any equivalent whatever. The very class among us which is most apt to commit crime, and the class which the rule strongly invites to commit crime, is, by the rule itself, relieved from all the consequences of crime. It cannot be expected that the United States will acquiesce in any construction of the treaty so unjust in itself, and so injurious to them.

I do not allow myself to suppose that the English Government will insist upon a ground so untenable in itself, and so pernicious to us. I think it altogether proper, however, to apprize you of the view which the President takes of it, in order that you may be fully prepared to take all necessary and proper measures in regard to it. So important is it considered, that if the English Government should insist on the construction intimated by Lord Aberdeen, this Government would probably feel itself compelled to abrogate the 10th article, as provided for in the 11th of the treaty.

I have the honor to be, Sir,

Your obedient servant,

A. P. Upshur.

Edward Everett, Esquire,
&c., &c., &c.

Note from Fox to Upshur, dated Sept. 29, 1843

Recd 28 Sept.
Acknowledged 29th
A. H. Derrick

(28)

Washington
29 September 1843.

Sir,

I have the honor herewith to inclose to you an authentic Copy of an Act of Parliament recently passed, and which has received the Assent of Her Majesty, for giving effect to the 10th Article of the Treaty of Washington, which provides for the mutual surrender, in certain cases, of persons fugitive from justice.

I avail myself of this occasion to renew to you the observance of my high consideration.

H. S. Fox.

A. P. Upshur
&c. &c.

ANNO SEXTO & SEPTIMO
VICTORIÆ REGINÆ.

CAP. LXXVI.

An Act for giving effect to a Treaty between Her Majesty and the United States of America for the Apprehension of certain Offenders.

[22d *August* 1843.]

Certain Offenders to be apprehended on Requisition of the United States.

Whereas by the Tenth Article of a Treaty between Her Majesty and the United States of *America*, signed at *Washington* on the Ninth Day of *August* in the Year One thousand eight hundred and forty-two, the Ratifications whereof were exchanged at *London* on the Thirteenth Day of *October* in the same Year, it was agreed that Her Majesty and the said United States should, upon mutual Requisitions by them or their Ministers, Officers, or Authorities respectively made, deliver up to Justice all Persons who, being charged with the Crime of Murder, or Assault with Intent to commit Murder, or Piracy, or Arson, or Robbery, or Forgery, or the Utterance of forged Paper, committed within the Jurisdiction of either of the High Contracting Parties, should seek an Asylum or should be found within the Territories of the other; provided that this should only be done upon such Evidence of Criminality as according to the Laws of the Place where the Fugitive or Person so charged should be found would justify his Apprehension and Commitment for Trial if the Crime or Offence had been there committed, and that the respective Judges and other Magistrates of the Two Governments should have Power, Jurisdiction, and Authority, upon Complaint made under Oath, to issue a Warrant for the Apprehension of the Fugitive or Person so charged, so that he might be brought before such Judges or other Magistrates respectively, to the end that the Evidence of Criminality might be heard and considered, and if on such Hearing the Evidence should be deemed sufficient to sustain the Charge it should be the Duty of the examining Judge or Magistrate to certify the same to the proper executive Authority, that a Warrant might issue for the Surrender of such Fugitive, and that the Expence of such Apprehension and Delivery should be borne and defrayed by the Party making the Requisition and receiving the Fugitive; and it is by the Eleventh Article of the said Treaty further agreed, that the Tenth

Article, herein-before recited, should continue in force until one or other of the High Contracting Parties should signify its Wish to terminate it, and no longer: And whereas it is expedient that Provision should be made for carrying the said Agreement into effect; be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That in case Requisition shall at any Time be made by the Authority of the said United States, in pursuance of and according to the said Treaty, for the Delivery of any Person charged with the Crime of Murder, or Assault with Intent to commit Murder, or with the Crime of Piracy, or Arson, or Robbery, or Forgery, or the Utterance of forged Paper, committed within the Jurisdiction of the United States of *America*, who shall be found within the Territories of Her Majesty, it shall be lawful for One of Her Majesty's Principal Secretaries of State, or in *Ireland* for the Chief Secretary of the Lord Lieutenant of *Ireland*, and in any of Her Majesty's Colonies or Possessions abroad for the Officer administering the Government of any such Colony or Possession, by Warrant under his Hand and Seal to signify that such Requisition has been so made, and to require all Justices of the Peace and other Magistrates and Officers of Justice within their several Jurisdictions to govern themselves accordingly, and to aid in apprehending the Person so accused, and committing such Person to Gaol, for the Purpose of being delivered up to Justice, according to the Provisions of the said Treaty; and thereupon it shall be lawful for any Justice of the Peace, or other Person having Power to commit for Trial Persons accused of Crimes against the Laws of that Part of Her Majesty's Dominions in which such supposed Offender shall be found, to examine upon Oath any Person or Persons touching the Truth of such Charge, and upon such Evidence as according to the Laws of that Part of Her Majesty's Dominions would justify the Apprehension and Committal for Trial of the Person so accused if the Crime of which he or she shall be so accused had been there committed it shall be lawful for such Justice of the Peace, or other Person having Power to commit as aforesaid, to issue his Warrant for the Apprehension of such Person, and also to commit the Person so accused to Gaol, there to remain until delivered pursuant to such Requisition as aforesaid.

Copies of the Depositions may be given in Evidence.

II. Provided always, and be it enacted, That in every such Case Copies of the Depositions upon which the original Warrant was granted, certified under the Hand of the Person or Persons issuing such Warrant and attested upon the Oath of the Party producing them to be true Copies of the original Depositions, may be received in Evidence of the Criminality of the Person so apprehended.

Offenders to be delivered up.

III. And be it enacted, That upon the Certificate of such Justice of the Peace, or other Person having Power to commit as aforesaid, that such supposed Offender has been so committed to Gaol, it shall be lawful for One of Her Majesty's Principal Secretaries of State, or in *Ireland* for the Chief Secretary of the Lord Lieutenant of *Ireland*, and and in any of Her Majesty's Colonies or Possessions abroad for the Officer administering the Government of any such Colony or Possession, by Warrant under his Hand and Seal to order the Person so committed to be delivered to such Person or Persons as shall be authorized in the Name of the said United States to receive the Person so committed, and to convey such Person to the Territories of the said United States, to be tried for the Crime of which such Person shall be so accused, and such Person shall be delivered up accordingly, and it shall be lawful for the Person or Persons authorized as aforesaid to hold such Person in Custody, and take him or her to the Territories of the said United States, pursuant to the said Treaty; and if the Person so accused shall escape out of any Custody to which he or she shall be committed, or to which he or she shall be delivered as aforesaid, it shall be lawful to retake such Person, in the same Manner as any Person accused of any Crime against the Laws of that Part of Her Majesty's Dominions to which he or she shall so escape may be retaken upon an Escape.

After Two Months the Persons apprehended may be discharged, if not conveyed out of Her Majesty's Dominions.

IV. And be it enacted, That where any Person who shall have been committed under this Act, to remain until delivered up pursuant to Requisition as aforesaid, shall not be delivered up pursuant thereto, and conveyed out of Her Majesty's Dominions within Two Calendar Months after

such Committal, over and above the Time actually required to convey the Prisoner from the Gaol to which he or she was committed by the readiest Way out of Her Majesty's Dominions, it shall in every such Case be lawful for any of Her Majesty's Judges in that Part of Her Majesty's Dominions in which such supposed Offender shall be in Custody, upon Application made to him or them by or on behalf of the Person so committed, and upon Proof made to him or them that reasonable Notice of the Intention to make such Application has been given to some or One of Her Majesty's Principal Secretaries of State, or in *Ireland* to the Chief Secretary of the Lord Lieutenant of *Ireland*, and in any of Her Majesty's Colonies or Possessions abroad for the Officer administering the Government of any such Colony or Possession, to order the Person so committed to be discharged out of Custody, unless sufficient Cause shall be shown to such Judge or Judges why such Discharge ought not to be ordered.

Limits of the Act.

V. And be it enacted, That if by any Law or Ordinance to be hereafter made by the local Legislature of any *British* Colony or Possession abroad Provision shall be made for carrying into complete Effect within such Colony or Possession the Objects of this present Act, by the Substitution of some other Enactment in lieu thereof, then it shall be competent to Her Majesty, with the Advice of Her Privy Council, (if to Her Majesty in Council it shall seem meet, but not otherwise,) to suspend the Operation within any such Colony or Possession of this present Act, so long as such substituted Enactment shall continue in force there, and no longer.

Continuance of Act.

VI. And be it enacted, That this Act shall continue in force during the Continuance of the Tenth Article of the said Treaty.

London: Printed by George E. Eyre and Andrew Spottiswoode, Printers to the Queen's most Excellent Majesty. 1843.

Note from Upshur to Fox dated September 29, 1843.

Henry S. Fox, Esquire, &c., &c., &c.

Department of State, Washington, 29th Sept'r., 1843.

Sir:

I have the honor to acknowledge the receipt of your note of this day's date, enclosing an authentic copy of a recent act of Parliament for giving effect to the 10th Article of the treaty of Washington; and to tender to you the renewed assurance of my distinguished consideration.

A. P. UPSHUR.

Dispatch No. 67, Upshur to Everett, dated Nov. 14, 1843

Department of State,
Washington, 14th Nov'r., 1843.

No. 67.—Edward Everett, Esquire,
&c., &c., &c.,

Sir:

Your despatches Nos. 58 and 59 were received on the 8th instant.

In future, when you are directed to make application for the exequatur of a Consul in any of the British Colonies, care will be taken to inform you whether the Consul for whom such application is to be made, is or is not, at the time of applying, at his post.

The President entirely approves of the course pursued by you upon the occasion of Mr. Cushing's suggesting to you the propriety of his obtaining, through your intervention, letters of recommendation from Her Majesty's Government to the British authorities in China.

With regard to the British Act of Parliament to carry into effect the treaty of Washington, you will take the necessary steps to obtain, through Lord Aberdeen, the opinion of the Law Officers of the Crown as to the construction which is to be placed upon that act; and if, in their opinion, the construction which was placed upon it in the case of Clinton be incorrect, and if in other respects the case be a suitable one for it, you will renew your application for his surrender.

I am, Sir, very respectfully,

Your obedient servant,

A. P. UPSHUR.

Opinion of law officers of the Crown in the case of Clinton

A. Everett's No. 75

Enclosed in Lord Aberdeen's note of 2 Dec. 1843.

Dispatch No. 75
A. 2

Whitehall
27 November 1843

Sir,

I am directed by Secretary Sir James Graham, to transmit to you the enclosed Copy of a Case, which has been laid before the Attorney and Solicitor General, with their opinion thereon, respecting the construction of certain provisions of the Act 6 & 7 Vict: Cap: 76, for giving effect to a treaty between Her Majesty and the United States of America, for the apprehension of certain offenders;—and I am to request that you will submit the same to the Earl of Aberdeen for His Lordship's information.

I am,

(Signed) G. M. PHILLIPPS.

W. Addington Esquire
&c. &c. &c.

R 27 Nov. 1843
R 28

Finals:

Copy of a case submitted to the Attorney and Solic. Genl. with reference to construction of the Act for giving effect to Treaty with U. States for mutual surrender of Criminals.

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2 Dec. 1843.

CASE.

Dispatch No. 75
A. 3.

Respecting the Construction of certain provisions of the Act of 6 & 7 Vict: C: 76, for giving effect to a Treaty between her Majesty and the United States of America, for the apprehension of certain offenders.

Copy of the Act: is left herewith.

Secr. Sir James Graham, has been pleased to transmit to the Solicitor of the Treasury, a Letter from Mr. Hall, Chief Magistrate of Police, of which the following is a Copy, with directions to submit the same to the Attorney and Solicitor General.

Police Court, Bow Street
18th October 1843.

Sir,

A person of the name of Nathaniel Britten, was recently apprehended and brought before my Colleague Mr. Jardine, at this Court, upon a Charge of Forgery in the United States, in order to be dealt with pursuant to the 6 & 7 Vict: Cap. 76, passed in the last session of Parliament, "for giving effect to a Treaty between Her Majesty and the United States of America, for the apprehension of certain offenders."

The accused, through the mistake of some one acting in behalf of the Government of the United States, had been improperly apprehended, no Warrant having been previously required from, or issued by a Magistrate in this Country, and he was not detained by Mr. Jardine, who thought the evidence tendered to him, inadmissible in law.

The Metropolitan Police Magistrates, and also Justices of the Peace throughout England, will no doubt frequently be required to give effect to this Act, and it is very important that their decisions regarding its construction, should not be conflicting, I beg to submit that the opinion of the Law Officers of the Crown, should be taken upon the following points, on which doubts have arisen in the minds of some of the Police Magistrates and Justices of the Peace.

1st. To enable a Magistrate to issue his Warrant under the Act, should it not appear, that the offence charged against the party sought to be apprehended *here*, is also an offence against the laws of this Country? (the words in the concluding part of the 1st clause of the Act being—"and upon such evidence as according to the laws of that part of Her Majesty's Dominions, would justify the apprehension and Committal for Trial, of the Person so accused, if the Crime of which he, or she shall be so accused, had been there committed")

2nd. Are *original* Depositions admissible, as well as copies thereof, under the second section of the Act, the said Act being a *penal* one?

3rd. If *original* Depositions be admissible, should it not be certified under the hand of the person who issued the Warrant in America, that upon such Depositions he granted his Warrant?

4th. If Copies are alone receivable, is it imperative on a Magistrate to require the Certificate of the Judge, or Magistrate, who granted the Warrant in America, that they are Copies of the Depositions, *upon which he issued his Warrant,* and should they be also attested upon the oath of the party producing them, that they are Correct Copies of the originals.

5th. Is the "Original Warrant" mentioned in the second Clause, to be taken to mean "the Warrant issued by the Judge, or Magistrate in America", and must such original Warrant be produced before a Magistrate in America, that he has issued upon such Depositions his Warrant, be sufficient? (In the act for carrying out the convention between Her Majesty and the King of the French, the original Warrant of arrest, is required to be produced.)

6th. Should a Magistrate in England, upon having admissible Depositions before him, require Evidence that the offence charged, is an offence against the Law of America, or is he bound, under the words received in evidence of the Criminality of the Person so apprehended "to act upon the Depositions as proof that the facts therein set forth, do constitute an offence according to that Law.

7th. Do the words "so apprehended" in the second section, exclude the reception of Copies of Depositions *before* the apprehension of the accused under the Warrant of a Magistrate, or may those words be read "so to be apprehended"?

The legislature can scarcely be supposed to have meant that a Magistrate should not act upon Depositions, until the accused shall have been actually apprehended under his Warrant.

Under the Act for giving effect to the Convention with France, the word used in the second section is "*apprehended*"

(Signed) THOMAS S. HALL.

The Attorney and Solicitor General will be pleased to advise upon the several points stated in Mr. Hall's Letter.

1st. The offences for which a party may be apprehended under this Act, are distinctly specified in the first Section of it. They are all offences known and recog-

nized by the Criminal Law of this Country, and the Magistrate should issue his Warrant upon the same description of Evidence, as he would require, in case the crime had been alleged to be committed in this Country.

2nd. We are of opinion that papers, or documents professing to be, or proved to be the original depositions, are not admissible under the 2nd Section of the Act, without the Certificate of the Magistrate who issued the Warrant.

3rd. We think they ought to be connected with the warrant, as Copies ought to be by a certificate from the party issuing it.

4th. We think Copies are not admissible, unless *certified* to be so, under the hand of the person in issuing the Warrant, and *attested* by the oath of the party producing them, that they are true Copies.

5th. There can be no doubt that the words "original Warrant," in the 2d Sect., mean the Warrant issued in America; but in order to justify the apprehension of an offender, under this Act, it does not appear to us to be necessary, that any Warrant executed by the Authorities in America, should be produced here. Such production is not required by the 1st Sec.: of the Act which gives the Justices here, the power to apprehend. The 2d Sec.: applies merely to the evidence of the guilt, and if the Depositions are offered in evidence before a Magistrate here, then the Certificate of the Magistrate abroad, who took the Depositions, and issued his Warrant upon them, becomes necessary to render them admissible.

6th. We think a Magistrate may act upon the Depositions as if they would constitute an offence here, without proof that the offence charged, is an offence in the foreign Country.

7th. We think that the Depositions may be received in evidence before the apprehension of the party.

Signed: Fred Pollock

W. W. Follett

Temple.

24th Nov. 1843

Dispatch No. 75, Everett to Upshur, dated Jan. 2, 1844

Rec' 25 Jan 5
No 75. London 2. January 1844.

A. P. Upshur Esquire,
Secretary of State,

Sir,

I beg leave to acknowledge the receipt of your despatches up to No. 71 inclusive with the exception of No. 69 which has not yet come to hand.

The various despatches and parcels for the Continental Legations, received by the "Acadia," the Steamer of the 16th December, have been placed in the hands of the Despatch Agent, to be forwarded to their respective destinations.

In my despatch No. 68, I alluded to a note which I had received from Lord Aberdeen of the 2nd December, transmitting an opinion of the Attorney and Solicitor General, upon a case submitted to them by the Bow Street Magistrates, relative to the construction of the tenth article of the Treaty of Washington, by which provision is made for the extradition of fugitives from justice. I forward this note with the opinion accompanying it with this despatch. The case submitted to the Attorney and Solicitor General, was so drawn up, as not to call their attention specifically to the ground on which the Magistrate had proceeded in refusing to order the arrest of Clinton, with a view to his extradition. But the opinion of the law officers seems to establish the insufficiency of that ground viz. that original affidavits could not be received in evidence. It requires however a mode of authentication, which had not been observed in reference to the affidavit on which the application in the present case was founded.—

By the steamer of the 1st December I received from Mr. I. R. Whiting, District Attorney for the City and County of New York, an exemplified copy of an Indictment against Clinton, with a Bench Warrant for his arrest, to be used in support of a renewed application for his surrender. You direct me in your despatch No. 67, to be governed by circumstances, as to making another application, and I am requested by the agent of the parties in interest in New York to confer with Messrs. Bush & Mullens, the Solicitors entrusted with the management of the business in this Country. They incline to think that an application founded on the Copy of the Indictment and Bench War-

rant would not succeed, under the opinion of the Attorney and Solicitor General; and have submitted a case on that point to Counsel learned in the law. I have been awaiting the result, in order to assist me in making up my mind as to the course best to be pursued. Clinton meantime is quietly established in London; shows himself (or did show himself) fearlessly on the Stock-Exchange; and has carried his audacity so far, as to commence an action against Mr. Peabody, to recover the United States Treasury Notes, from which he had fraudulently removed a part of the endorsement.

As soon as I can possess myself of the merits of the case in its various bearings, I shall address Lord Aberdeen a note on the subject. Whatever the final result as to the extradition of Clinton may be, I think it is plain already, that the Act of 6 & 7th Vict. C. 76, passed with the intent to carry into effect the tenth Article of the Treaty of Washington attaches conditions to the surrender of the fugitives, not provided by the Treaty itself, and has thus far in one very strong case defeated its operation.

My despatch No. 67 was taken up with a statement of the fraudulent practices of a person calling himself General John Bratich, and professing to be in the Military Service of the United States.— I now transmit the copy of his printed "Manifesto," which was designed to accompany that despatch. The Austrian Minister at this Court informs me that the scene which is detailed at such length, as having passed in the Hungarian diet is an entire fabrication, as is I suppose sufficiently obvious from internal evidence. He informs also that the individual in question is an imposter of the most dangerous character, and has furnished me with a sketch of his career which shows the justice of that description.—

The organization of the Chamber of deputies in Paris has resulted in a manner to strengthen the hands of the Ministry. In Spain all is still in confusion, and if appearances could be relied on, another convulsion is inevitable. Russia seems to have dissented from the other powers, as to the mode of dealing with the recent quasi-revolution in Greece; but to what extent or with what probable results does not yet appear.

Ireland is in a state of entire quiescence, awaiting the trials, which are assigned for the 15th instant. The Anti-Corn-law league pursues its operations in this part of the Kingdom with untiring vigor. Parliament meets for the despatch of business at the commencement of February.

Rumors circulate of changes in the government, such as the removal of the Lord Lieutenant of Ireland, and further modifications in the Corn-laws; but I cannot trace them to any authentic source.—

The Commercial relations of England with the United States are active, healthy, and improving. Notwithstanding the ill-repute here of the State Stocks, (and on this subject great bitterness of feeling prevails), private credit exists to as great an extent in our favor, as is at all desirable, and new branches of business are rapidly opening, in the importation of various articles of provisions, of Manufacture, and agricultural produce from the United States into this Country.

I am, Sir, with great respect,

Your obedient Servant,

EDWARD EVERETT.

Documents transmitted with despatch No. 75.

A. *Extradition of fugitives:*

1°. The Earl of Aberdeen to Mr. Everett 2 December 1843.

2°. *Enclosure.* S. M. Phillips Esq. to H. U. Addington Esq. 27 November 1843.

3°. *Sub-enclosure.* A case submitted to the Attorney and Solicitor General with their opinion, 24 November 1843.

B. *The affair of Bratish.*

Printed "Manifesto" of John Bratish.

Mr. Everett's No. 75.
Received 2 Dec. 1843. Copied into the Book of British Notes 5 Div.

Despatch No. 75.
A. 1.

On the 14th Ultimo, the Undersigned Her Brittanic Majesty's Principal Secretary of State for Foreign Affairs, had the honour to transmit to Mr. Everett, Envoy Extraordinary and Minister Plenipotentiary of the United States of America, at this Court, an Account of the circumstances which led to the discharge from custody of an Individual, named Nathaniel Britton, alias Clinton, charged with Forgery in the United States, and for whose sur-

render to the American Government application had been made by Mr. Everett.

With reference to the same case the Undersigned has now the honour to lay before Mr. Everett, the copy of a letter which the Undersigned has received from the Home Department, covering a copy of a case which, by the directions of the Secretary of State for that Department, has been submitted to the Attorney and Solicitor General for their opinion respecting the construction of certain Provisions of the Act, 6 and 7, Vict. C. 76, for giving effect to the 10th Article of the Treaty concluded at Washington on the 9th of August 1842, between Her Majesty, and the United States of America.

The Undersigned, in transmitting to Mr. Everett this Document, containing the opinion required, avails himself of this opportunity to express his hope that that opinion, in clearing away any doubts which may have arisen as to the quality and extent of the Powers possessed by the Majistracy of Great Britain for the apprehension of Offenders claimed on the part of the United States under the Treaty of Washington, will contribute to facilitate the execution of that Treaty on the part of Great Britain, and thereby to fulfil the wishes and intentions of Her Majesty's Government.

The Undersigned requests Mr. Everett to accept the assurances of his high consideration.

ABERDEEN.

Foreign Office,
December 2, 1843.

1844

CASE RESPECTING THE TREATY OF WASHINGTON AND THE ACT OF PARLIAMENT FOR GIVING EFFECT TO THE SAME.

COPY QUESTIONS SUBMITTED TO SIR JOHN BAYLEY AND HIS OPINION THEREON.

BUSH & MULLENS

The Earl of Aberdeen,
&c. &c &c.

Enclosure No. 2 in Mr. E's
Dispatch 89.

Copy

The Undersigned, Envoy Extraordinary and Minister Plenipotentiary of the United States of America, has the

honor to acknowledge the receipt from the Earl of Aberdeen, Her Majesty's Principal Secretary of State for Foreign Affairs, of two notes, the one dated the 14 October, and the other the 2 December 1843. The former contained a note from Mr. Manners Sutton to Mr. Addington, transmitting the report of Mr. David Jardine, one of the Bow street Magistrates, relative to the discharge of Britton *alias* Reed, a person whose extradition as a fugitive from justice, was applied for by the Undersigned on the 12th September last. Lord Aberdeen's communication of the 2nd December transmitted a note from Mr. G. M. Phillips to Mr. Addington, enclosing the opinion of the Law officers of the Crown, on a case submitted to them by the Bow street Magistrates, relative to the interpretation of the Act of 6 & 7 Victoria c. 76, passed to carry into effect the tenth article of the treaty of Washington, by which provision is made by the two governments, for a reciprocal extradition of fugitives from justice. These notes of Lord Aberdeen with their enclosures have been duly forwarded to Washington by the Undersigned, for the information of his government.

A short time after the receipt of Lord Aberdeen's communication containing the opinion of the law officers of the crown, a second application was made to the Undersigned by the American parties interested in the arrest of Britton, to obtain the surrender of that individual;—and to this end an exemplified copy of an indictment found by the grand Jury of New York against Britton and another person concerned with him in the alleged forgeries, together with a bench warrant for their arrest, was transmitted to the Undersigned.—The Undersigned was at the same time instructed by his government to renew the application for the surrender of Britton, if he should deem it expedient to do so, after being furnished with the opinion of the Law Officers of the crown on the interpretation of the above law.—

The Undersigned accordingly requested the solicitors acting for the parties at whose instance the application for the surrender of Britton had been made, to take the advice of counsel learned in the law, whether it was expedient under the circumstances of the case to renew the demand for the Surrender of Clinton.

The Undersigned herewith transmits for the information of the Earl of Aberdeen a copy of the case submitted to counsel with the opinion given thereon.—It might be inferred from this opinion that an exemplified copy of an

indictment in America and a bench warrant for the arrest of the person indicted, would be a sufficient foundation for an application for the surrender of the fugitive. This opinion, however, is not expressed with entire confidence by Sir John Bayley, the counsel consulted, and as he differs in a very material point from the Law officers of the Crown, in his interpretation of 6 & 7 Victoria c. 76, and as the method of procedure recommended in order to the success of an application for the extradition of a fugitive appears to be under any circumstances extremely complicated and at best of doubtful result, the undersigned has thought it not advisable for the present to renew his application for the surrender of Britton.

The Earl of Aberdeen will perceive from the view taken by Sir John Bayley of the case submitted to him, that the opinion of the law officers of the Crown has not removed the doubts that have been raised as to the interpretation of 6 & 7 Victoria c. 76. Fully persuaded of the wish of her Majesty's government to carry into effect the provisions of the tenth Article of the treaty of Washington, the undersigned invites the attention of the Earl of Aberdeen to the subject, in the hopes, if his Lordship should be of opinion that the act in question is of doubtful construction and difficult and uncertain execution, he will take the requisite measures for such amendments or new enactments, as may best remedy the evil.

The Undersigned avails himself of this opportunity to renew to the Earl of Aberdeen the assurance of his distinguished consideration.

[signed] Edward Everett.

Grosvenor Place,
20 February, 1844.

Dispatch No. 89 from Everett to Upshur, dated Feb. 26, 1844

Rec'd 25 March.
No. 89.

London, 26 February 1844.

A. P. Upshur, Esquire,
Secretary of State,

Sir,

With my despatch No. 75 I transmitted you the opinion of the Law-officers of the Crown, on a case submitted to them by the Bow street magistrates relative to the con-

struction of the 6 & 7 Victoria Cap. 76, the statute passed to carry into effect the tenth Article of the treaty of Washington. Having received from the district Attorney of New York an exemplified copy of an indictment found against Clinton and his accomplice Webb with a bench warrant for their arrest, I placed these papers together with the opinion of the Attorney and Solicitor General, and the report of the Bow street magistrate Mr. Jardine, forwarded to you with my despatch No. 59, in the hands of Messrs. Bush and Mullens the solicitors acting for the parties in America, interested in the arrest of Clinton. Messrs Bush and Mullens made these papers the basis of a case, on which they consulted their legal advisers Sir John Bayley, a gentleman of great professional distinction. I transmit with this despatch a copy of the case submitted and of Sir John Bayley's opinion.

You will observe that though Sir John Bayley inclines to think that an exemplified copy of an indictment and a bench warrant might be deemed a sufficient ground for the extradition of a person claimed as a fugitive, he does not express that opinion with entire confidence, and he differs wholly from the Bow street magistrate and the Law-officers of the Crown in his construction of the Act. Under these circumstances the solicitors were of opinion, that it was not expedient to make the Indictment and the Warrant the basis of a new application.

Supposing it proper to be governed to some extent by their advice and wishes, I have for the present forborne to make another application; but have adopted a course which will probably contribute as effectually to the establishment of the interpretation of 6 & 7 Victoria Cap. 76, and to the amendment of that Statute or the passage of a new one, if it should be found, as Sir John Bayley appears to think, too obscure to be conveniently acted upon. I have transmitted to Lord Aberdeen a copy of Sir John Bayley's opinion, supposing that his observations on the obscurity of the law and on the opinions of the Bow street magistrates and the Law officers of the Crown would bring the subject in the most advantageous form to the consideration of the government. My note with the legal opinion will no doubt be referred to the Attorney and Solicitor General. Should they think an Indictment and Bench warrant sufficient ground for extradition, they will probably request Lord Aberdeen to convey to me an intimation to that effect. Should they be of a different opinion, we shall have been saved the inconvenience of another unsuccessful application.

I learn from the District Attorney of New York by the last steamer, that additional papers are in preparation, with a view to meet the objections taken by the Bow street Magistrate to the evidence offered in support of the original application.

It may be proper to add, in conclusion, that having some time since mentioned the subject of this despatch to Lord Aberdeen, and expressed the opinion that an amendment of the present law or a new law would be necessary, to carry into effect the tenth Article of the Treaty, he replied that prompt consideration should be given to the subject, and that if a new law should be deemed advisable, its passage might without great difficulty be obtained.

I am sir, with great respect, your obedient servant,

EDWARD EVERETT.

Documents accompanying despatch No. 89.

1°. Opinion of Sir John Bayley on a case submitted by Messrs Bush & Mullens.

2°. Mr. Everett to the Earl of Aberdeen, 20th February 1844, transmitting copy of the said opinion.

With Mr. E's No. 89

Enclosure No. 1 in Despatch 89.

CASE RESPECTING THE TREATY OF WASHINGTON AND THE ACT OF PARLIAMENT FOR GIVING EFFECT TO THE SAME.

COPY QUESTIONS SUBMITTED TO SIR JOHN BAYLEY AND HIS OPINION THEREON.

1st. Whether the Secretary of State in England can require to be furnished with evidence of the Commission of the alleged crime, so as to satisfy himself of the propriety of issuing his Warrant or whether he is bound to issue his Warrant solely upon the requisition of the American Minister.

2nd. What is the operation of the Secretary of States Warrant. Is it simply to authorize the Magistrates here to entertain the Case or may the party charged be arrested by virtue of the Warrant.

3rd. Is it indispensable that before the arrest of the party charged the evidence in support of the charge should

be laid before a Magistrate & an application made to him to issue *his* Warrant to apprehend the party or may the party after the issuing of the Secretary of States Warrant be arrested without Warrant as in the case of a Felony committed in this Country,

4th. What Magistrates have jurisdiction to entertain the application for a Warrant and afterwards to hear the Case, whether the Magistrate only in whose jurisdiction the party shall ultimately be found, or may any Magistrate issue his Warrant for the apprehension of the party and may the party be arrested anywhere in the United Kingdom of Great Britain and Ireland under the Magistrates Warrant properly backed.

5th. What is the "Original Warrant" mentioned in the 2d Section of the Act. Is it the Warrant of the Secretary of State or a Warrant issued in America.

6th. Is an Indictment found by a Grand Jury in America together with the Bench Warrant issued there for the apprehension of the Offender sufficient evidence of guilt to justify the surrender of the party under the Treaty.

7th. Can the Depositions taken in America be read here before a Magistrate in support of the charge and if so, must those Depositions be originals or Duplicates or Copies certified and verified in the manner required by the 2nd Section of the Act.

8th. Will the party charged be entitled to offer evidence to rebut the charge and has a Magistrate power to remand the party charged for the production of further evidence in support of the charge or to give time to the party to procure evidence to rebut it.

9th. What in your Opinion is the exact course of proceeding to be adopted under the Treaty and the Act as it at present stands for procuring the surrender of a party charged under the provisions of the Treaty.

10th. Can the Act be amended in any and what particulars in order to avoid the questions now raised and to give effect to the Treaty in the most simple and precise manner possible. And generally to advise the American Minister under the foregoing circumstances.

OPINION

1. I am of opinion that the Secretary of State ought, before he issues his Warrant, to require to be provided with evidence of the commission of the crime charged, so as

to satisfy himself of the propriety of issuing it, and that he is not bound to act merely upon the requisition of the American Minister. This appears to me to be made apparent by the language of the 10th Article of the Treaty as recited in the preamble of the Act, namely "that it was agreed that upon requisition made to the Minister all such parties as were charged with the crimes therein mentioned should be delivered up, provided that this should only be done upon such evidence of criminality as according to the Laws of this Country would justify such persons committed for Trial, if the offence had been here committed. This agreement is then followed by another, that all Judges and Magistrates should have jurisdiction upon complaint on oath to issue his warrant for the apprehension of the person so charged, so that he might be brought before the Judge or Magistrate, to the end that the evidence of criminality might be heard and considered. Upon this therefore it is clear that there is evidence of criminality twice to be gone thro', first as it seems to me before the Secretary of State, and secondly after the Warrant has been issued, and the person charged apprehended, before the Judge or Magistrate who issues the warrant for apprehension. The 10th Article of the Treaty being the preamble of the Act, is quite as much entitled to consideration in construing the Act, as the enacting part itself, and construing both together I cannot say that I should have felt any difficulty in knowing how to act in Britton's Case. It seems to me impossible to suppose as suggested by Mr. Jardine in his Report that the legislature ever contemplated investing the American Minister with such unconstitutional powers as to enable him to cause the arrest of a party in this Country on his mere requisition to the Secretary of State: or to make him a Judge of the Law of this Country so as to enable him to say whether the offence charged was an offence within the Law of this Country or not, and yet this would be the effect of holding that the Secretary of State was bound to issue his warrant on the mere requisition of the American Minister and without evidence.

2. I am of opinion that the Secretary of States Warrant is merely an authority to the Justices and Magistrates here to act. It is this & this only which gives them jurisdiction. It is directed to them, and it does not in my opinion authorize an arrest under it. The Treaty recited in the Preamble provides how the apprehension is to be made, namely by the Warrant of the Judge or Magistrate, and the enacting part of the 1st Section of the Act which

requires the Justices and Magistrates to aid in the apprehension of the person accused must be construed with reference to this part of the Preamble, and in my opinion the proper meaning of the words "to aid in the apprehension" is to issue their Warrant.

3. In my answer to the preceding question I have said that I think the party charged cannot be apprehended on the Secretary of States Warrant. I am of opinion that he can only legally be apprehended under a Warrant of a Judge or Magistrate, and construing the Preamble and the enacting part of the Act together I think it is indispensable (under this Act) that evidence in support of the charge, should be laid before the Judge or Magistrate, before he can be called upon to issue his Warrant, as the Treaty provides that the Judge or Magistrates Warrant shall be issued "upon complaint made under oath."

4. As this Act of Parliament is framed, I am of opinion that the Warrant for apprehension can only be issued by a Magistrate in whose jurisdiction the offender is found, but that the hearing may be before any Magistrate who has jurisdiction within the same limits as the Magistrate who issues his warrant. The Act is perhaps defective and certainly not very clear in this respect, as the enacting part is more extensive than the preamble—the preamble confining the hearing to the same Magistrate who issues the warrant, whereas the enacting part authorizes the hearing to be before any Magistrate so as he acts within his own jurisdiction. In this instance I think the enacting part would not be restrained by the preamble as it does not give the Magistrate any greater jurisdiction than he already possesses in other cases: and I consider the object of the Act to have been to give the Magistrates on being served with the Secretary of States Warrant, the same powers of apprehending and hearing, and committing for surrender, in the cases of the enumerated offences committed in America, as they already possess for the purpose of apprehending, hearing and committal for Trial, in cases of offences committed in this Country, and nothing more. On a Magistrates Warrant properly backed I think the Offender may be arrested anywhere in the United Kingdom.

5. In my opinion the original Warrant mentioned in the second section of the Act, is the only warrant previously named *i.e.* the Secretary of States Warrant. I have already stated my reasons for considering it essential for the Secretary of State to act upon evidence before he issues his Warrant. This is properly called the original Warrant

because it is the Warrant which originates the Magistrates Jurisdiction here. I cannot conceive where Mr. Jardine or the Attorney or Solicitor General got their idea from, that it means a Warrant issued in America, as there is not a syllable in the Treaty or Act which has the slightest reference to any such Warrant, and the obtaining any such Warrant in America which can fall under this Treaty and act be a most useless and unnecessary proceeding, as the Offender has generally fled the Country before any such Warrant could be acted upon. It seems to me that the miscarriage of this Act of Parliament has entirely arisen from this unwarrantable construction of the meaning of the words "original Warrant" and from disregarding the ordinary Rules of construing Acts of Parliament by taking the Preamble and enacting part together whereas by construing them as I contend they ought to be the working of the Act is plain and intelligible enough.

6. I am inclined to think that an Indictment found by a Grand Jury and a Bench Warrant issued thereon when properly certified would be sufficient evidence of the guilt of the party accused (provided the offence charged would be a similar offence in this Country) to justify his committal for surrender. A certificate of an Indictment having been found, is the only evidence which a Judge in this Country ever acts upon in this Country in granting a Bench Warrant for committal for Trial: and it seems to me that the object of the act in question is merely to give Judges and Magistrates upon the issuing of the Secretary of States warrant, the same jurisdiction over the offences enumerated in it, committed in America, as they would have had, if they had been committed in this Country. At all events I think for properly carrying out the 10th Article of the Treaty it ought be be so, and would be so, if another act were to be passed. They are clearly some evidence for the Magistrate, but where it can be done it would always be prudent to give other evidence of the truth of the charge and the identity of the offender as well for the purpose of obtaining the Secretary of States Warrant as the Magistrates Warrant for committal for surrender.

7. I am of opinion that Depositions taken in America may be used here either before the Secretary of State or the examining and committing Magistrate, but that when the original Depositions are used before the latter, they must be proved to be those which were used by the Secretary of State in granting his Warrant. I entirely differ from Mr. Jardine as to the admissibility of the original

Depositions before the Magistrate. He seems to think that as the Act mentions certified copies only the originals are inadmissible. I do not understand either the Attorney or Solicitor General to go this length, but merely to say that if the originals which were used before the Secretary of State are also used before the Magistrate they must be certified by the Secretary of State as being the Depositions on which he acted. I am not quite clear that the Secretary of States Certificate is necessary. I rather think that any proof on Oath that they were the Depositions acted upon by him would be sufficient. At the same time I think there must be such proof or certificate. On the broad ground taken by Mr. Jardine I quite dissent. I consider the 2d Section of the Act to have been framed upon the supposition that the original Depositions could not be produced, as would be the case where they have been filed in America, but as the originals are the best evidence, it seems to me to be most unreasonable to suppose that the Legislature intended to exclude them, and substitute secondary evidence for them. It would introduce quite a new feature in our Law of evidence to hold that that which might be proved by a copy might not be proved by the original. I consider my view of this branch of the case strengthened by the recent decision in the Court of Exchequer in the Case of *York v. Brown*, 10 M. & W. 78, where the Insolvent Act made a certified copy of the appointment of the Assignee Evidence. The Title of the assignee being in issue, it was proved by production and proof of the original appointment, and objection was made that it ought to have been proved by a certified copy and not by the original; but the Court does not appear to have thought that there was any thing in the objection, for tho' they decided against it, they did not notice it in their Judgment.

8. I am of opinion that the party charged would be entitled to offer evidence to rebut the charge. It would be most unjust if he could not because he might be able to shew that he was not the real party charged, or that he could not have committed the offence. I think the examining Magistrate would have just the same power of remanding as if he were enquiring into an offence committed within this Country.

9. I think the course of proceeding to be adopted under the Treaty and Act (as the Act at present stands) for securing the Surrender of a party charged under the present Treaty are as follows: First, in cases where Depositions are taken and filed in America, there should be certified

copies of those Depositions forwarded to this Country. These should be laid before the American Minister for him to issue his requistion to the Secretary of State. The same or other similar certified copies should then be laid before the Secretary of State, and he acting I presume under the advice of the Law Officers of the Crown would issue his original Warrant to the Judges and Magistrates and certify that such copies were copies of the Depositions on which he acted in issuing his Warrant. Upon these certified copies and Warrant being laid before a Magistrate, and proof on oath given before him of the Secretary of States signature, and that the parties before whom the original Depositions were taken in America had power to take them, and that the party certifying the copies to be true, was the proper party to grant such Certificate, I consider it would be the duty of the Magistrate to issue his warrant for the apprehension of the party named in the Secretary of States Warrant, and upon his being arrested and taken before him, or before any other Magistrate acting within the same jurisdiction as the Magistrate granting or backing the Warrant under which the apprehension took place, the latter Magistrate would enquire into the truth of the charge, the nature of it as affected by the Law of this Country, and the identity of the party charged, and as soon as the case was ripe for his decision, he would grant or withhold his order for committal for surrender and his certificate to the Secretary of State, according as the proof brought home the guilt of the party accused and the offence with which he was charged and his identity, to his satisfaction. And on the receipt of the committing Magistrates Certificate, the Secretary of State would issue his Warrant for the delivery over of the Offender to the American Minister. In cases where the original Depositions are transmitted from America to this Country the same routine would have to be gone thro' with this exception, that the Secretary of State should certify that the original Depositions were those used before him and those on which he acted, and on proof of this I think the same original Depositions might be used before both Magistrates, where two are concerned, that is before the one who grants the Warrant for apprehension and the one who enquires into the truth of the charge and commits for surrender.

10. The Act 6 & 7 Vic. C. 76 might no doubt be amended in many particulars, so as to give effect to the Treaty. Tho' after the doubts which the Magistrates have raised, and the unaccountable opinion (as it seems to me) of the Attorney

and Solicitor General, that the words "original warrant" mean a Warrant issued in America, I think it hopeless to expect that the provisions of the Treaty can be carried into effect under the present Act of Parliament. I should therefore advise the American Minister to apply to our Government to repeal the present Act and bring in a new one in which the power and course of proceeding as well of the Secretary of State as of the Magistrates might be so clearly defined as to avoid difficulty in future. I do not expect there would be much difficulty in framing such an Act.

JOHN BAYLEY,
2 Essex Court Temple.

Dispatch No. 139, Everett to Calhoun, June 3, 1844

Rec'd June 21
No. 139.

London, 3 June 1844.

John C. Calhoun, Esq'r,
Secretary of State,

Sir,

In transmit with this despatch a note from Lord Aberdeen of the 2nd of April, 1844, enclosing a further opinion of the Law Officers of the Crown on the subject of the extradition of fugitives and the interpretation of the 6 and 7 Victoria Cap. 76, and denying the validity of the objections taken by Sir John Bayley to their former opinion. I beg to refer to my despatches numbered respectively 55, 56, 59, 60, 68, 75 and 89 for the history of the application for the surrender of Clinton (an individual concerned in a gross case of forgery in the United States,) and generally of the steps taken by me to ascertain the interpretation of the Statute of 6 and 7 Victoria Cap. 76, being the act of Parliament passed to carry into effect the tenth Article of the Treaty of Washington.

I had hoped, by this time, to have it in my power to make a final report in the case of Clinton, but in this I regret to say I have been disappointed. As I stated in my Despatch Nov. 89 of the 26th of February, I submitted to Lord Aberdeen a copy of the opinion of Sir John Bayley, on the case laid before him by Messrs Bush and Mullens, the Solicitors of the parties in New York, at whose instance the surrender of Clinton had been demanded. I received on the 3rd of April the note from Lord Aberdeen

with the further opinion from the Attorney and Solicitor General, alluded to at the commencement of this Despatch.

On receiving this document from Lord Aberdeen, I placed it immediately in the hands of Messrs Bush and Mullens. They were then in daily expectation of receiving additional papers from New York, which would enable them to meet the requisition of the Statute of 6 & 7 Victoria Cap.76, as interpreted by the Attorney and Solicitor General, and consequently put it in my power to make another application for the surrender of Clinton with a reasonable prospect of success. This expectation had not when I last heard from them been fulfilled. I addressed them a note of enquiry on the 1st of June to know if the expected papers had been received by the steamer of the 16th of May; but to this note I am as yet without an answer. I hope to have it in my power, without much farther delay to write you something decisive on the subject.

I have formerly transmitted copies of the 6 & 7 Victoria Cap. 76, but thinking a duplicate might be convenient to the Department it is herewith enclosed.

I am, sir, very respectfully, your obedient servant,

EDWARD EVERETT.

DOCUMENTS TRANSMITTED WITH DESPATCH 139.

1°. The Earl of Aberdeen to Mr. Everett, 2 April 1844.

2°. Opinion of the Attorney and Solicitor General enclosed in Lord Aberdeen's note of the 2d. April.

3°. Act of Parliament 6 & 7 Victoria Cap. 76. Printed

Edward Everett Esq.

Received 3 April 1844, Copied into Book of "British notes" 6 April 1844.

1°. DESPATCH 139.

The Undersigned, Her Majesty's Principal Secretary of State for Foreign Affairs, had the honour to receive on the 20th of February last the Note of Mr. Everett, Envoy Extraordinary and Minister Plenipotentiary of the United States of America at this Court, relative to the course of proceeding under the Act 6. and 7. Vict. C. 76, for giving effect to the 10th Article of the Treaty between Great Britain and the United States, for the apprehension of certain Offenders; together with a Copy of questions sub-

mitted to Sir John Bayley and his opinion thereupon which accompanied Mr. Everett's Note.

The Undersigned, having referred these Papers to the Secretary of State for the Home Department, has received in reply a Copy of a Report from Her Majesty's Attorney and Solicitor General, dated the 23rd Ultimo, which the Undersigned has the honour to communicate herewith.

Mr. Everett will see from this Report, that Sir John Bayley appears to have altogether misunderstood the meaning and effect of the opinion of the Law Officers of the Crown, to which he refers; and that the Attorney and Solicitor General do not agree with him in thinking that any alteration is necessary in the Statute 6 and 7 Vict. in order to give full effect to the 10th Article of the Treaty in question, and moreover that they do not think there is any difficulty in the construction of that Statute or of the Treaty, or in the proper course of proceeding under it; and Mr. Everett will find their opinion upon these points clearly stated and explained in their report.

The Undersigned has the honour to renew to Mr. Everett the assurances of his high consideration.

ABERDEEN.

Foreign Office,
April 2, 1844.

Enclosed in the note from Lord Aberdeen of 2 April 1844.

2°. DESPATCH 139.

We have perused the papers laid before us, and especially the opinion of Sir John Bayley, and we see no reason to alter our opinion of the 24th Nov. 1843.

We presume that Sir John Bayley had not seen any copy of the opinion of the Law Officers of the Crown to which he refers, as it is clear that he has altogether misunderstood the meaning and effect of it. We do not agree with him in thinking that any alteration is necessary in the Statute 6. & 7. Victoria, in order to give full effect to the 10th Article of the Treaty, nor do we think that there is any difficulty in the construction of that Statute or of the Treaty in the proper course of proceeding under it. We think it is not necessary that any depositions or any evidence should be laid before the Secretary of State in order to authorize him to issue his Warrant in the first instance. We think he may do this on the requisition of the American Minister alone provided the offence charged be within the Terms of the Treaty. The evidence must be given before

the Justice or Magistrate who is called on to commit the offender; and it must be such evidence as, according to the Law of this Country, would justify the apprehension and committal for trial of the party accused, if the crime had been *here* committed; it must be evidence taken upon oath before the Magistrate, or that species of evidence which is made admissible by the second section of the Act. A Copy of an Indictment found in America, and the Bench Warrant issued thereupon such Indictment, are not made evidence by the Act of Parliament, nor is there any enactment that a Bench Warrant issued in America shall be of any force or effect in this Country. We are therefore clearly of opinion that the Copy of the Indictment and the Bench Warrant are not sufficient to authorize a Justice to issue his Warrant of Commitment in this Country. If a Warrant has been issued in America against the party accused on evidence taken on oath before a Judge or Magistrate there, the Depositions so taken in America are by the second section made admissible in evidence here, if authenticated by the Certificate of the Magistrate who issued the Warrant in America, and attested on oath by the party proving them here; and the Magistrate in this Counrty would be justified, without any other evidence than that contained in the Depositions, to apprehend and commit the parties accused; but this is the only case in which any departure from the ordinary course of proceeding by the English Law is provided by the Act. The Warrant issued in America is in no case necessary to be produced in this Country, nor is it necessary to prove that any Warrant at all has been issued there, in order to justify the committal of the prisoner, if the evidence given before the Magistrate here is sufficient in his judgment to warrant his committal for trial. The only allusion to the original Warrant is in the Second Section, and which refers only to the admissibility in evidence of the Depositions taken in America.

(Signed) FRED POLLOCK.

W. W. FOLLETT.

Temple, 23rd March 1844.

Note from Calhoun to Pageot dated June 24, 1844

Mr. Alphonse Pageot
&c. &c. &c.

Department of State,
Washington, 24th June, 1844.

Sir:

I have the honor to inform you that the additional article agreed upon on the 15th of April last, to the convention for the surrender of fugitive criminals, of the 9th of November, 1843, between the United States and France, has been submitted by the President to the Senate of the United States, and was duly approved by that body on the 15th instant, with certain amendments defining more explicitly the crimes therein mentioned.

I hasten to communicate to you, for the information of your Government, a copy of the resolution of the Senate above referred to, and avail myself of the occasion to offer you renewed assurances of the distinguished consideration with which I am, Sir, your obedient servant.

J. C. Calhoun.

Note from the French Minister to Calhoun, dated June 28, 1844

Rec'd July 1/
Légation de France
aux Etats Unis

Washington ce 28 Juni 1844

Monsieur

J'ai recu, avec la lettre que vous m'avez fait l'honneur de m'ecrire, le 24 de ce mois, la copié de la Résolution par laquelle le Sénat à apporté quelques amendements à l'article additionel, signé le 15 Avril der. à la Convention d'extradition conclue à Washington le 9 Novembre, 1843.— Je transmets, aujourd'hui, cette Résolution à mon Gouvernement.

La Convention de 9 Novembre ayant laissé à chaque Gouvernement le soin de régler les formes de l'extradition, je suis chargé, Monsieur, de vous prier de me faire connaitre les dispositions qu'adoptera à cet égard, le Gouvernement fèdèral quant a la France, le Gouv't de Roi se bornera à demander que la demande d'extradition soit formée officiellement par la voie diplomatique, et accompagnée d'un mandat d'arret ou d'un jugement quelconque (warrant, verdict, true bill or indictment) constatant clairement la

nature des faits mis à la charge de l'individu dont l'extradition sera reclamée, assui que sa nationalité.

Agréez, Monsieur, l'assurance de ma haute consideration.

A. PAGEOT.

L'Honorable Monsieur Calhoun.
Secretaire d'Etat des Etats Unis.

M. Alf. Pageot,
&c., &c., &c. 28 June, 1844.

Relation to forms to be observed by the respective Governments in their requisitions for fugitive criminals under the Convention of 9th November, 1843.

TRANSLATION OF A NOTE FROM THE MINISTER PLENIPOTENTIARY OF FRANCE.

To the Hon. J. C. Calhoun, Secretary of State
Legation of France in the U. States.

Washington, June 28, 1844.

Sir—

I have received the letter which you did me the honour to write to me, on the 24th of this month, and with it, the copy of the Resolution, whereby the Senate has introduced some amendments in the additional article, signed on the 15th of April, last to the Convention for the surrender of criminals, concluded at Washington on the 9th of November 1843. I have this day transmitted that Resolution to my Government.

As the Convention of November 9th leaves to each Government, the care of determining the forms to be observed in the surrender, I am charged Sir to request you, to inform me of the dispositions which the Federal Government may make on this subject. As regards France, the King's Government will limit itself to a request, that the demand for surrender be officially made, through a diplomatic channel; and should be accompanied by an order for arrest, or by some judgment, such as a warrant, verdict, true bill, or indictment, clearly stating the nature of the acts with which the individual demanded stands charged, as well as the nation to which he belongs.

Accept Sir the assurance of my high consideration.

A. PAGEOT.

Letter from the Attorney General to Calhoun, dated July 8, 1844

Rec'd 8 July.

J. Nelson
July 8

Hon. John C. Calhoun;
Secretary of State.

Attorney General's Office.
8th July, 1844.

Sir:

The Treaty with France providing for the surrender of persons accused of the crimes therein enumerated, and fleeing within the jurisdictions of the United States and France respectively, prescribes as well the mode and manner, as the evidence upon which such surrender shall be made.

The mode and manner prescribed is:

"Requisitions made in the name of the respective parties through the medium of their respective Diplomatic Agents."

The evidence upon which it is to be done is:

"Only when the fact of the commission of the crime shall be so established, as that the laws of the country in which the fugitive or the person so accused shall be found, would justify his or her apprehension, and committment for trial, if the crime had been there committed."

With reference to the mode and manner to be pursued, as preliminary to the surrender; there can be no difficulty. The Treaty is explicit on the subject, and the suggestion contained in Mr. Pageot's note is accurately conformed to it.

In regard to the degree of evidence, which may be required to establish the fact of the commission of the crime, of which the person demanded may be accused, there is much difficulty. No rule more explicit or certain than that contained in the Treaty itself can indeed be prescribed. Cases as they occur, will necessarily depend upon the laws of the several States in which the fugitive may be arrested or found. That which may be sufficient to justify the apprehension and committement in one State, may not be regarded as sufficient in another. All that can be stipulated for therefore is, that in every case that may be presented to this Government, all proper and lawful means will be used to bring about the surrender demanded In practice there will be found no difficulty, whilst an attempt to particularize might exclude the very means

of redress most effectual to accomplish the object in the view of the contracting parties.

Upon principle, I do not think that a mere warrant for the arrest of an accused party, *without the evidence upon which it was granted,* would be sufficient to justify the imprisonment of a citizen.

A *verdict* would—so also an Indictment and True Bill ought, I should think, to be regarded as *prima facie* evidence of guilt. But as I remarked before, this will depend on the law of the jurisdiction, in which the accused party may be found,—and must be referred to the judgment of the United States Officer, whose aid may be invoked in execution of the Treaty.

The provisions of the Treaty with England on this subject are more full, though substantially the same with those in the Treaty with the King of the French. To show the liberal principles upon which that Treaty has been carried into execution, I beg leave to refer to my opinion, in the case of Christina Cochrane, a printed copy of which is inclosed.

In view of the whole subject, I am of opinion, that whilst the mode of making the demand may be stipulated, and that suggested by Mr. Pageot is unexceptionable,—it is impracticable to prescribe any rule of evidence, more definite, than that contained in the Treaty itself. Its provisions can be effectuated only by a *bona fide* effort in every case to arrest and surrender the guilty accused.

I have the honor to be,

Very respectfully, Sir,

Your Obedient Servant,

JNO. NELSON.

Note from Calhoun to Pageot dated July 10, 1844

Mr. Alphonse Pageot
&c. &c. &c.

Department of State,
Washington, 10th July, 1844.

Sir:

With reference to your letter of the 28th ultimo, acknowledging the receipt of that addressed to you by this Department on the 24th of the same month, and in answer to your request to be made acquainted with the intentions of this Government as to the forms to be observed in the surrender of fugitive criminals pursuant to the provisions

of the Convention of the 9th of November, 1843, between the United States and France, I have the honor to transmit to you a copy of a communication just received from the Attorney General of the United States, to whom your letter has been submitted for his consideration. Concurring in the views therein taken of this subject, and seeing no objection whatever to the course of proceeding proposed to be adopted on the part of the King's Government, as explained in your note, to give effect to the stipulations of the Convention, I beg you to accept renewed assurances of my distinguished consideration.

J. C. CALHOUN.

Note from Calhoun to Pageot
dated July 10, 1844

Mr. Alphonse Pageot
&c. &c. &c.

Department of State,
Washington, 10th July, 1844.

Sir:

I have duly received your note of the 6th instant, relative to a recent French law regarding licenses, by the nineteenth article of which it is intended to extend to foreign travelling clerks in France, the same treatment extended to French travelling clerks in the respective countries they may visit; and requesting, with a view to the execution of this arrangement to be informed of the footing on which the latter are placed in the United States by its legislation.

Having referred to the Secretary of the Treasury a translation of your note above referred to, I have now the honor to communicate to you, in answer to your application, the copy of a letter just received from that Department; and avail myself of the occasion to renew to you the assurance of my high consideration.

J. C. CALHOUN.

Mr. Crallé presents his compliments to Mr. Pageot, and has the honor to inform him that the President will receive him at one o'clock on Monday next, when Mr. Pageot will have an opportunity of presenting the letter of His Majesty the King of the French announcing the birth of the Duke of Alençon. Department of State, Washington, 4th Oct'r 1844.

* * * * *

acquire the rights of citizenship here, must, amongst other formalities, make oath or affirmation that he will support the constitution of the United States, and that he absolutely and entirely renounces and abjures all allegiance and fidelity to any foreign Power, Potentate, State, or Sovereignty whatever, and particularly by name the Power, Potentate, State, or Sovereignty whereof he was before a citizen or subject.

From these provisions it would seem, by necessary implication, that our laws presuppose a right on the part of citizens and subjects of foreign Powers to expatriate themselves and transfer their allegiance; and although the abstract right has not, to my knowledge, been settled by any authoritative decision, I feel no difficulty in expressing the opinion that the United States, acting upon these principles, in reference to the citizens and subjects of other countries, would not deny their application to cases of naturalization, of their own citizens by foreign Powers,—and, of course, to the case of Demerlier, who, if he should be naturalized by France, would, on this view of the subject, be absolved from his allegiance to the United States.

I have the honor to be, with high consideration, Sir, your obedient servant,

J. C. CALHOUN.

Instructions, Calhoun to Everett dated August 7, 1844

Department of State,
Washington, 7th Augt., 1844.

This

No. 99.—Edward Everett, Esquire,
&c., &c., &c.

Sir:

Some time in September last, a gang of seven negroes in East Florida, robbed the son and daughter of a citizen of the Territory, of the name of Geeren, and plundered his house in his absence, and, after murdering him, while in pursuit of them, escaped to Nassau, in New Providence. The grand jury of the judicial district, after full investigation, returned bills of indictments against each of them, for robbery and murder. Requisition was made in due form by the Secretary of State, through the British Minister at Washington, and transmitted to the Marshal of that portion of the Territory, who was authorized to receive the criminals. He repaired to Nassau; and, on appli-

cation, the Governor of the Bahamas issued his requisition to the Chief Justice of the Colony, who, acting with the Associate Judges, in open Court, refused to deliver up to justice the fugitives, on the ground, that the evidence offered was not such as was required by the act of Parliament for giving up criminals, fugitives from justice, in certain cases. The Court remarked, in delivering its opinion, that: "An indictment, *per se,* can never be received as evidence. It is not enough for us to know that the American jury thought the parties guilty. We ought to know the *grounds* upon which they thought them guilty. What may constitute the crime of murder in Florida, may be very far from doing so according to the British laws, or even to the laws of the Northern States of America. By issuing a warrant, then, to apprehend the parties, in virtue of these indictments, we might be doing so on evidence which would not justify their apprehension by the British laws, and should thereby be proceeding in direct violation of the act:"

The President, in compliance with calls from the two Houses, transmitted to Congress all the correspondence and documents connected with the case, of which a copy is enclosed, with a copy of the speech of Mr. Levy, the Delegate from the Territory, on a motion to refer the message and documents to the Committee on Foreign Relations, to which I would refer you for more full information. The message, with the documents, was referred to the committee. No report was made, but, it is understood, one will be at the next session.

You will see, by reference to the documents, that the crimes committed by the fugitives were wanton and atrocious. The affair, connected with the refusal to deliver the fugitives up, has caused much feeling and excitement, especially in that portion of the Union. The remarks of the Court have little doubt, that it is its opinion, that the case does not come within the 10th article of the Treaty, on the ground that the crimes charged of murder and robbery being committed by slaves, escaping from the authority of their masters, do not constitute murder and robbery according to the laws of Great Britain. No other meaning can be attached to the remarks which accompanied the objection taken against receiving the authenticated copies of the bills of indictment found by the grand jury, which were offered in evidence.

It is very desirable to know, before any further step is taken, whether the Government of Great Britain intends,

to support the ground taken by the Court, as clearly intimated in its remarks. If so, it would be idle to discuss the question whether the authenticated copies of the bills of indictments found by the grand jury, was sufficient evidence of the crimes charged to justify the commitment of the fugitives under the provisions of the 10th article, or to take any further step to have them surrendered, in this or any other case of fugitive slaves, be their crime what it may, or under whatever circumstances committed. There can be none stronger than this, whether regarded in reference to the atrocity of the crimes, or the circumstances under which they were committed. When it is ascertained, whether the Government of Great Britain intends to support the grounds indicated by the Court or not, we, on our part, will be prepared to decide what course it will be proper for us to adopt.

According to that ground, the acts charged as murder and robbery must be such as to constitute those crimes not only according to the laws of Florida, but also to constitute them such by the laws of Great Britain; or, rather, in this case, of the Bahama Islands. After a careful examination of the subject, I cannot regard it as tenable; on the contrary, I hold it to be clearly inconsistent with the provisions of the article, and the plainest dictates of reason. The body of the article is in the following words: "It is agreed that the United States and Her Britannic Majesty shall, upon mutual requisitions by them or their Ministers, Officers, or Authorities, respectively made, deliver up to justice all persons who, being charged with the crime of murder, or assault with intent to commit murder, or piracy, or arson, or robbery, or forgery, or the utterance of forged papers, committed within the jurisdiction of either, shall seek an asylum, or shall be found within the territories of the other." Such is the body of the agreement. Nothing can be more clear. The persons to be delivered up to justice; the crimes charged for which they are to be delivered up; within whose jurisdiction they must be committed, and within whose territories the fugitives shall be found, are all so clearly specified, as to preclude the possibility of doubt. It comprehends *all persons, charged* with the crimes of murder, robbery, &c., &c., *committed within the jurisdiction* of the party making the requisition, and *found* in *the territory* of that on whom the requisition is made. That these words are broad enough to comprehend the case under consideration is beyond doubt; and of course the only possible question which can be made is,

whether it is not taken out by the proviso which immediately follows. The material portion, and that on which the construction of the residue depends, is in the following words: Provided "that this" (the delivery up to justice), "shall only be done upon such evidence of criminality as, according to the laws of the place where the fugitive or person so charged shall be found, would justify his apprehension and commitment for trial, if the crime or offence had there been committed." It is too plain to require proof, that it relates to the evidence on which the fugitive is to be given up to justice, exclusively, without intending to restrict, or change the body of the agreement. That having clearly specified, who were to be delivered up to justice, on the requisition of either party, it became necessary, in order to give effect to the agreement, to specify on what evidence it should be done; and to do that accordingly is the sole object of the proviso. It specifies that it shall be done on such evidence of criminality as would justify his apprehension and commitment for trial by the laws of the place where the fugitive is found, had the crime *charged* been there committed, that is, if the crime *charged* be murder or robbery, as in this case, on such evidence as would justify apprehension and commitment for trial for murder or robbery at the place.

Taking the body of the agreement and proviso together, it would seem to be unquestionable, that the true intent of the article is, that the *criminality* of the act charged should be judged of by the laws of the country within whose jurisdiction the act was perpetrated; but that *the evidence* on which the fugitive should be delivered up to justice, should be by the laws of the place where he shall be found. Both are to be judged by the laws of the place where they occur; and properly so; as they are paramount within their respective limits. And hence it is expressly specified in the body of the agreement, that the crime charged must have been committed within the jurisdiction of the party making the requisition; and, in the proviso, that the evidence, on which the fugitive shall be delivered up, shall be such as is required to apprehend and commit for trial according to the laws of the place where he is found. That this is the true construction, is confirmed by the fact, that it reconciles the proviso with the body of the agreement; while the opposite, which would judge of the criminality of the act, not by the laws of the place within whose jurisdiction it was committed, but by those of the place, where the fugitive was found, would

not only essentially change what is clearly specified in the body of the agreement, but make it absurd. If such had been the intention of the parties, instead of reading as it does, it ought to have read as follows: It is agreed that the United States and Her Britannic Majesty shall, upon mutual requisitions, by them or their Ministers, &c., &c., respectively made, deliver up to justice all persons, who, being guilty of (not charged with,) the crimes of murder, &c., &c., &c., &c., according to the laws of the place where the fugitive is found (not committed within the jurisdiction of the party making the requisition,) shall seek an asylum, or shall be found in the territories of the other. Such an agreement would have been manifestly absurd; and yet, as absurd as it would be, it must be so worded, to make it agree with that construction of the proviso, which would judge of the criminality of the act by the laws of the place where the fugitive was found, and not by that where the act was committed. If it be against a fundamental rule of construction to give such a construction to one part of an agreement, as to make it inconsistent with another, when it is possible to avoid it, what shall be said of a construction, which shall give to a proviso, such a construction, as would render the body of the agreement absurd, when another would reconcile the two and give effect to every word of both? If there should be an irreconcilable difference between them, the subordinate should surely yield to the principal—the proviso to the body of the agreement.

But such a construction of the proviso would not only be irreconcilable with the body of the agreement, but would, as I have stated, be inconsistent with the plainest dictates of reason. No act committed in one country, however criminal according to its laws, is criminal according to the laws of the other. Crimes in a legal sense, are local; and are so only because the acts constituting them are declared to be so by the laws of the country where they are perpetrated. Great Britain cannot by her laws make an act committed within the jurisdiction of the United States criminal within her territories, however immoral of itself; and *vice versa*. The proposition is too clear to require illustration, or to be contested; but, if that be admitted, it must also be admitted that the criminality referred to in the proviso is to be judged of by the laws of the place within whose jurisdiction the act was charged to have been perpetrated, and not where the fugitive is found.

Against this but one position can be taken in defence of the ground indicated by the Court of the Bahama Islands; and that is, to admit our construction of the proviso to be correct, but to maintain, that, while the criminality of the act must be judged of by the laws of the place where it was charged to have been committed, it must, at the same time, be such as would constitute the crime charged by the laws of the place where the fugitive was found. To this two answers may be given, either of which is conclusive. In the first place, it may be replied, that it is a pure assumption unwarranted by any thing whatever, either in the proviso, or the entire article. It is not only not expressed, but is not necessary to give to any word in the article its full and proper meaning, or to reconcile any apparent conflict among its provisions. And in the next, that it would be impossible to give such a construction to the proviso, without greatly restricting the plain meaning of the body of the agreement. Instead of subjecting *all* persons to be delivered up to justice who are charged with the crimes of murder, &c., &c., &c., committed within the jurisdiction of the party making the requisition, and found in the territories of the other, it would subject *only those* to be delivered up, who were charged with acts constituting the crimes of murder, &c., &c., &c., by the laws *of both* countries, in direct contradiction to the express provisions of the body of the agreement, and against the plain intent of the proviso, as has been shown, and the fundamental rules of construction, which requires that the different parts of an agreement should be so construed, if possible, as to reconcile all and give effect to each.

I might go further, and show, that the position is against the plain and literal meaning of the proviso itself, but I deem it unnecessary to add to the force of the reply already advanced against it. Indeed, it might be shown that, if admitted, it would not sustain the ground indicated by the Court. In order to do that, it would be necessary to assume, that, according to the laws of Great Britain, a slave is justified in killing and robbing, if it be necessary to effect his escape and secure his liberty. Without pretending to be conversant with her laws, I feel assured I hazard nothing in asserting that there is no such law either in Great Britain or the Bahama Islands, or any other of her numerous colonial possessions. No doubt there are laws in all, which justify homicide, if committed in resistance to unlawful restraint; but none that do, where the restraint is lawful. That is the broad and fundamental dis-

tinction in the penal code of all countries, between justifiable homicide and murder, where death ensues in consequence of resistance to restraint. By it, this case must be tested, if the ground indicated by the Court of the Bahama Islands be admitted, and not by the incidental circumstance, whether this or that restraint be lawful or not, by the laws of both countries. Each has the right to determine for itself what restraints its welfare and safety may require to be imposed on the acts of the individuals of which it is composed, and that must be determined in reference to circumstances, that are almost infinitely varied, not only in relation to the two countries as a whole, but also to the various States, Territories, Colonies, and dependencies of which they are composed. They are in consequence greatly diversified, and would be found, on examination, very different in reference to most of the crimes enumerated by the 10th article of the Treaty; and which would lead to great confusion and uncertainty, if any other rule of judging of criminality be admitted, but the broad and fundamental one above stated. Tested by that, this case would be embraced by the article, even according to the restricted standard indicated by the Bahama Judges. There is no doubt that the restraint from which these fugitives were escaping, when the acts charged were perpetrated, was imposed by the laws of Florida, and, of course, was a lawful restraint, and the homicide committed by them, murder; and so, there is little doubt, it would have been declared, even by the Bahama Court, in any other case of restraint made lawful by the acts of Florida, except the one in question.

This brings up two very grave questions. On what principle can such a distinction be made, and is the Government of Great Britain prepared to make it? I can imagine but one and that is, that the form of restraint implied under the name of domestic servitude; that is, of one man holding another under subjection and commanding his labor without his consent, is so repugnant to the moral code, that it cannot be made lawful, although sanctioned by laws of the country where it exists. But it cannot be that Great Britain, who is more responsible than any other country for the extent of that form of servitude on this continent, and which has but so recently abolished it with so little benefit to herself or those liberated, in her own possessions, is prepared to adopt and act on such a principle, and thereby place, as far as its operation may extend, this country, Russia, Spain, Brazil, and all others not

prepared to follow her example, in a state of national outlawry in reference to herself, against the authority of all ages, and of the great expounders of international laws, and it may be added, of the Bible itself, which, as often as it is mentioned, no where discourages such servitude, or pronounces it to be repugnant to morals or religion. It cannot be, that she is prepared to adopt a principle, which, if carried out in practice, would not only be subversive of the right of one man holding in subjection and commanding the labor of another without his consent, but equally so, of one People or Nation holding another, or one portion of one People or Nation holding the other in subjection, and commanding their labor without its consent. It cannot be, but she must see, that the principle tends to the subversion of all human authority, and that it contains within itself the germ of universal anarchy; and must, if carried out in practice, reäct with destructive fury on her political institutions, and burst the bonds, which hold in servitude, under her subjection, so large a portion of the human race.

But, be that as it may, it is at least certain, that she cannot but know, that the treaty never would have been ratified had we believed, that she would adopt the principle, or so construe the 10th article, as to exclude from its operation fugitive slaves, charged with the crime of murder, robbery, or any other of those enumerated, who might seek an asylum, or be found in her territories. Certain it is, that no Senator from the slave holding States would have knowingly voted for a treaty embracing a principle, which would stamp such a stigma on their constituents and institutions, and exclude them from almost all the advantages they could hope to derive from it. It might be added, nor any Senator vote for it who regarded the honor of his country, or the sacred obligations of the Constitution, which makes it the duty of the Federal Government to extend equal protection to all the members of the Union. The subject, indeed, was not passed over without notice, while the treaty was before the Senate. During the discussion, it was objected to the article, that it was so worded, intentionally, as to exclude from its operation cases of this description. It was replied, that the portion of the article objected to was copied verbatim from Jay's treaty of 1794, made long before England had contemplated the abolition of slavery in her possessions, and when there could be no intention of the kind. It was added, that treaty had never received an interpretation

that would warrant such a construction. The reply quieted all apprehension, and the treaty received the vote of a large majority of the slave holding States. Without them, it would not have been ratified.

Such we believe to be the true construction of the 10th article of the treaty, in reference to this most important point, and such was the expectation under which the treaty was ratified. It is full time, that we should know what construction the Government of Great Britain intends to adopt in relation to it; and whether our just expectation is to be realized or not. You are, accordingly, hereby instructed by the President to bring the subject, without any unnecessary delay, to its attention, in strong, but respectful, terms, and to urge it to come to an early decision. Be that what it may, it is very desirable, that we should know it before the meeting of Congress at its next session, when the subject will doubtless claim the attention of both Houses.

I am, Sir, very respectfully,

Your obedient servant,

J. C. CALHOUN.

Papers relating to the demand of the French Government for the surrender of Metzger, dated November 18, 1844.

Rec. Nov. 18

Légation de France
aux Etats Unis.

Washington ce 18 Novembre 1844

L'Honorable Monsieur Calhoun
Secretaire d'Etat des Etats Unis

Monsieur

J'ai l'honneur de vous transmettre ci joins, un mandat d'arret décerné contre le ne. Nicolas Lucien Metzger, ancien notaire, prévenu de banqueroute frauduleuse et de faux, et qui, d'après les renseignements parvenus à la justice, serait refugée aux Etats Unis.

Je suis chargée de réclamer du Gouvernement fédéral, en vertu de la Convention du 9 Novembre 1843, l'extradition de cet individu, dans le cas où il serait découvert, et comme les Etats Unis n'accordent pas l'extradition pour cause de banqueroute frauduleuse, je suis auterisé à prendre, au nom du Government du Roi; l'engagement de ne laisser

poursuivre Metzger que pour le crime de faux qui lui est imputé. Je joins une note contenant des indications prepres à faciliter la recherche de cet accusé.

Agréez, Monsieur, l'assurance de ma consideration très distinguée.

A. Pageot.

M. Alf. Pageot
&c. &c. &c.

18 Nov. 1844

Requests the surrender of Lucien Nicolas Metzger, a fugitive charged with fraudulent bankruptcy, in virtue of the recent treaty.

Note sur le Sr. Metzger

Je résulté des renseignemens parvenus à la justice que Metzger seriat arrivé à New-York le 25 mai der. et en serait reparti le 6 juin suivant. Je prenait alors le nom de Louis de Strasbourge. Un Sr. Fistié, originaire de Grosbliedersholt, et demeurant à New-York, 54 Chatham Street, a donné ces indications au Sr. Karnt, qui s'est trouvé dans cette ville à la fin de mois de juin et a vu, sur le règistre de l'hôtel où a logé Metzger, le nom de Louis de Strasbourge, qu'il a reconnu avoir été écrit par Metzger lui même. Depuis ce temps, il aurait été aperçu à Philadelphie, il portait alors des moustaches.

Dans le cas où Metzger serait arrêté et s'il s'elevait quelques doutes sur son identité, il serait facile de la verifier par le confrontate de cet inculpé avec le Sr. Karnt, s'il se trouvait encore en Amérique, le Sr. Fistié, ou le Sr. Lacour, ancien notaire à Sarreguemines, réfugée aux Etats Unis à la suite de sa déconfiture et actuellement employé à New-York, chez un pharmacien ou un Droguiste de cette ville.

MANDAT D'ARRET.

Louis-Philippe, Roi des Français, à tous ceux qui ces présentes verront, salut; Savoir faisons que

Nous Etienne Thilloy

Juge d'instruction pour l'arrondissement de Sarreguemines, département de la Moselle,

Mandons à tous huissiers ou agens de la force publique de conduire à la maison d'arrêt de Sarreguemines, le nommé

Nicolas Lucien Metzger, ex Notaire, domicilié à Sarreguemines inculpé de banqueroute frauduleuse, de faux et d'abue de confiance, crimes et délets prévue et ..... par ce article 40 L, 145, et 147 et 408 ou code penal;

Mandons au gardien de la maison d'arrêt de le recevoir, le tout en se conformant à la loi.

Mandons et ordonnons à tous huissiers, sur ce requis, de mettre le présent à exécution; à nos Procureurs généraux et à nos Procureurs près les tribunaux de première instance, d'y tenir la main; à tous commandans et officiers de la force publique de prêter main forte quand ils en seront légalement requis: en foi de quoi ledit mandat d'arrêt a été signé par nous Juge d'instruction et scellé de notre sceau.

Fait à Sarreguemines, le trente et un aout 1844, milhuit cent quarante quatre, et délivré par duplicata.

(Seal) THILLOY.

Vu pour legislation de la Signature de M. Thilloy juge d'instruction pour le Tribunal Civil de Sarreguemines Paris le 13 au. 1844

Par delegation: Le Chef de Bureau au Ministére de la Justice.

(Seal) LEVEURE.

SIGNALEMENT;

Age	36 ans,
Taille	1 m. 73 c.
Cheveux	chataine,
Front	découvert,
Sourcile	chataine,
Barbe	chataine,
Visage	ovale,
Bouche	moyenne,
Yeux	bleux,
Menton	rond,
Seint	sain,

Le Ministre des Affaires Estrangères Certifie véritable la signature d'autre part M. Lavuere.

Paris e 23 au. 1844

Par autorisation du Ministre Le Chef de Bureau de la Chancelleire.

(Seal) HANDY

Le Ministre Plenipotentiare de france prie les Etats Unis d'Amerique certifie véritable la signature ci venus de M. Seneuze. Washington ce 18 Novembre 1844

Le Ministre Plenipotentiare de france

(Seal) A. PAGEOT

TRANSLATION OF A NOTE FROM THE MINISTER PLENIPOTENTIARY OF FRANCE.

To the Hon. J. C. Calhoun, Secretary of State.

Washington, November 18, 1844.

Sir—

I have the honour to transmit to you herewith a warrant decreed against Nicolas Lucien Metzger late notary accused of fraudulent bankruptcy and forgery; who according to information received by the Department of Justice has taken refuge in the United States.

I am charged to claim from the Federal Government in virtue of the Convention of November 9, 1843 the surrender of this individual in case he should be discovered; and as the United States do not grant the surrender on the ground of fraudulent bankruptcy I am authorised to engage in the name of the King's Government not to allow Metzger to be prosecuted for any other than the crime of forgery which is imputed to him. I add to this a note containing notices concerning the person accused calculated to aid in discovering him. Accept Sir &c. A. Pageot.

Notice respecting Metzger.

From inquiries made by the Department of Justice, it appears, that Metzger arrived at New York, on the 25 of May last, and departed on the 6 of June following. He then passed by the name of Louis de Strasbourg. A Mr. Fistie from Grosbliedersholt, residing at New York, 54 Chatham Street, gave this notice to Mr. Karnt, who was in that city, about the end of June, and saw the name of Louis de Strasbourg, in a hand which he recognized to be that of Metzger, on the Register book of the Hotel, where that person lodged. Since that time, he has been seen in Philadelphia, where he wore moustaches.

In case Metzger should be arrested, and any doubts thereto exist as to his identity, they may be solved, by bringing him face to face, with Mr. Karnt, if he is still in America, or Mr. Fistie, or Mr. Lacour late notary at Sarregue-

mines, who took refuge in consequence of his defeat, at New York, and is now employed with a druggist or apothecary in New York.

WARRANT *(Mandat d'Arret)*, LOUIS PHILIPPE, KING OF THE FRENCH To all to whom these presents may come Greeting—

We, Etienne Thilley, Judge of Instruction, for the *arrond'ssement* of Sarreguemines, in the Department of La Moselle, do order all (*huissiers*) constables or agents of the public force, to bring to the prison of Sarreguemines, the person named Nicolas Lucien Metzger late Notary, residing at Sarreguemines, charged with fraudulent bankruptcy, forgery and abuse of confidence, crimes and delinquencies provided for by the articles 402, 145, 147 and 408 of the Penal Code.

We order the Keeper of the prison to receive him according to law.

We order all *huissiers*, hereupon to put these presents into execution; all our Attornies General and our Attornies near the Courts of First Instance to see to it; to all Commanders and officers of the public force to lend their aid whenever legally summoned thereto. In faith whereof the said warrant has been signed by us the Judge of Instruction and sealed with our Seals.

Done at Sarreguemines this 30 of August 1844.

THILLEY.

The true signature of M. Thilley, Judge of Instruction at Sarreguemines, Paris, Sept. 13, 1844.

HANDY,
Chief of Bureau in the Department of Justice.

Personal Description of the accused—

Age	36 years
Height	1 metre 73 centimetres
Hair	Chestnut
Forehead	High
Eyebrows	Chestnut
Beard	Chestnut
Face	Oval

Mouth ..... Middling
Eyes ..... Blue
Chin ..... Round
Complexion ..... Healthy

The Minister of Foreign Affairs certifies that the above is the true signature of M. Handy.

Paris, Sept. 23, 1884. The Chief of Bureau of Chancery by authority.

LEVEURE.

The Minister Plenipotentiary of France in the United States certifies the above to be the true signature of M. Leveure.

Washington, November 18, 1844.

A. PAGEOT.

Letter, Everett to Calhoun, dated November 23, 1844

No. 216. London, 23 November, 1844.

John C. Calhoun, Esq.,
Secretary of State,

Sir,

The receipt of your despatch No. 99 of the 7th of August, relative to the refusal of the Authorities at Nassau to surrender the slaves charged with the murder of Mr. Geeren of Florida, and demanded as fugitives, has been already acknowledged. Believing that a personal conference with Lord Aberdeen afforded the means of learning with the least delay the ground intended to be taken by this Government in reference to the questions raised on occasion of that refusal and discussed in your despatch, I availed myself of the earliest opportunity for the appointment of an interview for that purpose. After some delays not easily avoided at this season of the year, it took place on the 20th instant at Argyle House.

I introduced the subject with a general statement of the facts of the case, as set forth in your instructions just mentioned. I called Lord Aberdeen's attention to the argument by which the judges at Nassau defended the supposed requirements of the Statute of 6 & 7 Vict. C. 76; and to the inference naturally to be drawn from their language. I observed to him that I had been led by various considerations, to doubt whether the Court on this occasion had rightly interpreted the views of Her Majesty's Govern-

ment. That if it were so, I was instructed strongly to contest them, but that being desirous of ascertaining the principles adopted by Her Majesty's Government on this subject without the delay incident to an elaborate discussion, I had thought it better to bring the question before him in this way, in the hope that he would be able to furnish me at once with a satisfactory explanation.

I then read to Lord Aberdeen that portion of your despatch No. 99, in which the facts of the case are related, and the inference naturally to be drawn from the language of the Court at Nassau is commented on.

As soon as I had done this, Lord Aberdeen observed that he found no difficulty in saying that of the extract from the opinion of the Court at Nassau given in your despatch, the only portion which he adopted, as the language of the Government, was the first part, in which it is stated that an indictment is not of itself, under the Act of Parliament for carrying the treaty into effect, sufficient ground for giving up a fugitive. But the same answer would have been given by Her Majesty's Authorities had the persons demanded been free. The argument contained in the other part of the passage quoted in your instruction was no doubt intended to enforce the view taken by the Court of the expediency of the provisions of the Statute; but the answer to the application was perfect without it, and he felt no hesitation in saying, that the argument or illustration of the Court was not adopted by him. Consequently, as far as the Government was concerned, no inference like that dwelt upon in your letter should be drawn from it.

I told him that the notorious fact that the technical crime of murder was the same in all parts of the United States and in England left little room for doubt, that when the Court stated that "what may constitute the crime of murder in Florida may be very far from doing so according to the British laws or even the laws of the Northern States of America," they must have alluded to the case of slaves, and have intended to say that evidence which would establish a charge of murder against a free man might not establish it against a slave.

Lord Aberdeen admitted that this was a fair inference as far as the Court was concerned, but repeated that it was merely language of argument or illustration for which the Government was not responsible.

He then remarked that he thought, as far as the present case was concerned, this must be considered a satisfactory reply to the enquiry contained in your despatch.

The surrender of the fugitives was refused, because the application was not supported by the evidence required by the Statute; and it would have been of necessity refused, for the same reason, had the application been made in any part of the United Kingdom and had the fugitives been free white men.

He did not, however, mean to say that in no case whatever which might arise hereafter, would the result of an application for the surrender of a fugitive charged with murder, depend in any degree upon the question whether he was a slave endeavoring to escape from his Master. By the laws of all countries the same act of killing did or did not constitute the crime of murder, according to the circumstances of the case, which were often matters of very nice discrimination, and he could very well conceive that in cases which might arise, the fact of a person's being a slave might materially affect the question of his guilt on a charge of having committed murder. Her Majesty's Government must reserve to itself the liberty of dealing with cases of this kind when they present themselves and of being governed by circumstances which cannot be foreseen nor provided for, in any general regulations. He was, however, free to say that he did not share the opinion of those who hold that slaves as such cannot commit a crime. He regarded them as moral agents, and of course to be regarded in that light on a demand for extradition, leaving the consideration due to their condition as such to be decided by the circumstances of each individual case.

In reference to my observation, that the legal crime of murder was the same under the laws of both countries, Lord Aberdeen said that in arranging the provisions of the extradition treaty with France, they had experienced some difficulty on that point. It was found that the words "Murder" and "Meutre" in the two languages respectively would not without further qualification technically describe the same crime, and it had been necessary to add the words of definition, "comprehending the crimes designated in the French penal code by the terms assassination, parricide, infanticide, and poisoning."

In the course of the interview I stated to Lord Aberdeen, that the Government of the United States considered that an indictment or a duly authenticated copy of one, was by the treaty a sufficient ground for demanding the extradition of fugitive criminals, and that the statute in requiring the depositions or copies of depositions on which the indictment was founded, (if it did so require them, which was matter of some doubt) went beyond the treaty which

neither party to that contract was competent to do. I added that I made this remark not now by way of entering into discussion on that point, but to prevent an inference being drawn from my silence.

Such is the substance of our conference on this subject, from which taken in connection with what has fallen from Lord Aberdeen on occasions where it has been less formally alluded to, I am disposed to infer that the instructions given to the Colonial Authorities, in reference to slaves whose surrender is demanded as fugitive criminals, are of a very general nature and such as would require, in cases of any difficulty, a reference to the Home Government for its decision. That no instructions have been sent to refuse the surrender of slaves as such is, I think, clearly implied in the remark of Lord Aberdeen, that in his view they are to be regarded as moral agents capable of committing crimes. His distinct disavowal of the argumentative statement by the Court as to the grounds of the Statute provision, which is supposed to require the production of the evidence laid before the Grand Jury who find the indictment, may be considered as proof that no instructions had been sent to the Court authorizing such a statement.

As it appears from the observation of Lord Aberdeen that an indictment will in no case of itself be considered as a sufficient ground of surrender, I shall as soon as possible, address a note to him on that subject.

I am, Sir, with great respect,

Your obedient Servant,

EDWARD EVERETT.

Note from Calhoun to Pageot
dated December 4, 1844

To Mr. A. Pageot,
&c. &c. &c.

Department of State,
Washington, Decr. 4th, 1844.

Sir:

I have the honor to acknowledge the receipt of your note, dated the 18th ultimo, (with its enclosure,) in which you inform me that you are instructed to claim from the Federal Government, in virtue of the convention of November the 9th, 1843, the surrender of an individual named Nicholas Lucien Metzger, a fugitive from justice, charged with forgery and other crimes committed within the dominions of His Majesty the King of the French, and who has since sought refuge within the United States.

By the first article of the convention to which you refer, it is stipulated that the delivery of fugitives from justice shall be made "only when the fact of the commission of the crime shall be so established as that the laws of the country in which the fugitive or the person so accused shall be found would justify his or her apprehension and commitment for trial, if the crime had been there committed." And it is further stipulated, in the fifth article, that "the provisions of the present convention shall not be applied in any manner to the crimes enumerated in the second article, committed anterior to the date thereof."

Before pointing out the defects which appear on the face of the proceedings in the present case, it may not be improper to offer a few general remarks on the provisions of the convention itself.

The language of the first article, as quoted above, evidently involves a question of evidence, which, in all cases, so far as the United States are concerned, belongs to the judicial tribunals of the country. The Executive Department of the Federal Government cannot take cognizance of such questions, nor issue any precept or warrant in the nature of an arrest. All that it can rightfully do, under the provisions of the convention, is to order the surrender of the accused party when in actual custody, and after an arrest and commitment by some court of competent jurisdiction. What evidence is necessary in order to authorize an arrest and commitment, depends upon the laws of the State or place where the criminal may be found; and of course cannot be specified so as to meet every case. But it may be laid down, as a general rule, to which it is believed there would be few or no exceptions, that the affidavit of one or more credible witnesses—or duly authenticated copies of such testimony, given in a foreign court of competent jurisdiction—or the record evidence of proceedings in the nature of an indictment and true bill, certified by such court, would authorize such an arrest and commitment in any of the States of the Union. The question, however, must, in all cases, be left to the arbitrament of the magistrate or tribunal before which the complaint or accusation is originally made; and the Executive cannot interfere until certified of the arrest and commitment of the accused party.

In the present case it is only necessary to point out the defects in the proceedings in order to show the reasons which prevent the Executive from ordering the surrender in this case. The first is, it does not appear at what time

the crime was committed; which, of itself, is fatal under the provisions of the fifth article of the convention. The next is, that the *mandat d'arret* is not accompanied by a certified copy of the proceedings and evidence on which it was issued. It is believed that the *mandat d'arret*, thus sustained, would be regarded as sufficient to authorize an arrest and commitment in any of the States of the Union,—and, of course, the surrender on the part of the Executive.

I have the honor to be,

With high consideration,

Sir,

Your obedient servant,

J. C. CALHOUN.

Instructions, Calhoun to Everett dated January 28, 1845

This

No. 120—To Edward Everett, Esquire,
&c., &c., &c.

Department of State,
Washington, Jan'y. 28th, 1845

Sir:

The last steamer brought your dispatch No. 216, giving an account of the conference between you and Lord Aberdeen in reference to the subject of my dispatch No. 99.

I regret to say that the result is very unsatisfactory. The object of my dispatch would seem to have been misunderstood. By recurrence to it, you will perceive that its leading object is to ascertain whether, according to the construction given by the British Government to the tenth article of the treaty of Washington, the *act* charged as a crime must be such, in order to bring it within the provisions of the article, as would constitute the crime charged by the laws of the place where the fugitive criminal is found, as well as of that where it was committed.

The ground taken by the Nassau authorities in declining to surrender the slaves charged with murder and robbery in Florida, in the case to which my dispatch refers, leaves no doubt that such is their opinion. It would be idle after an avowal of such an opinion on their part to take any further step in the case, until it is ascertained whether the Home Government will sustain the Colonial

in it or not. To ascertain that, is the object of my former dispatch.

Your account of the conference with Lord Aberdeen gives us nothing satisfactory on this important point. He, indeed, disavows the opinion of the Nassau Judges, except the portion which holds that an indictment is not sufficient in itself under the act of Parliament to carry the treaty into effect; and declares that the argument in illustration of the Court was not adopted by him; and, consequently, as far as the Government was concerned, no inference like that on which my dispatch dwelt, could be drawn from it. This, taken by itself, might be fairly considered as negativing the grounds taken by the court—that the act charged as a crime must be such as the laws of the place where the fugitive criminal is found, as well as of that where it was perpetrated; and would be satisfactory were it not for the remarks which followed. I allude to those in which he says that "he did not, however, mean to say that in no case whatever which might arise hereafter, would the result of an application for the surrender of a fugitive charged with murder, depend in any degree upon the question whether he was a slave endeavoring to escape from his master. By the laws of all countries the same act of killing did or did not constitute the crime of murder, according to the circumstances of the case, which were often matters of very nice discrimination; and he could very well conceive that in cases which might arise, the fact of a person's being a slave might materially affect the question of his guilt on a charge of having committed murder. Her Majesty's Government must reserve to itself the liberty of dealing with cases of this kind when they present themselves, and of being governed by circumstances which cannot be foreseen nor provided for in any general regulations. He was, however, free to say that he did not share the opinion of those who hold that slaves as such cannot commit a crime. He regarded them as moral agents, and of course to be regarded in that light on a demand for extradition, leaving the consideration due to their condition as such to be decided by the circumstances of each individual case." The amount of these remarks as applied to this case is that the same act which may constitute the crime of murder in the United States may not constitute it in England; that the fact of the person charged with the commission of the crime being a slave, might materially affect the question of his guilt according to the circumstances of the case; and that they were matters of nice discrimination;

and that the Home Government must, in consequence, assume to itself the liberty of deciding on cases of the kind.

It is admitted that an act which may constitute the crime of murder in either of the two countries may not constitute it in the other, not, however, because there is any difference between them in the definition of murder. It results from a different cause, which would seem to require, from the remarks of Lord Aberdeen, some explanation in order to a clear understanding of the subject.

In all such cases, the cause may be traced, it is believed, to the fact that there are acts which are prohibited and made illegal in the two countries respectively that are not in the other. Whether a case of homicide in consequence of such act is murder, or not, in either, depends in such cases on the fact whether the act be prohibited and illegal or not in the country where it was committed. If it be illegal, it would; but if legal, it would not. Thus, in England, the killing of game, unless by certain privileged persons, is prohibited under severe penalties, and made illegal; while in the United States there are no such laws. On the other hand, in many portions of this Union, including the Territory of Florida, domestic servitude is authorized by law, and it is made penal for a slave to resist the authority of his master; while in England it is abolished and prohibited by law. It results from this diversity between the laws of the two countries, in those cases, that it would be murder in England if an unauthorized person should kill an individual for attempting to arrest him, save on his own premises; while, in a similar case, in the United States, where any man may lawfully kill game on his own premises, it would be regarded as justifiable homicide. The reverse would be the fact in the case of domestic servitude. In the portion of the Union where it exists, the act of killing which would be murder in a slave attempting to escape from the authority of his master. It would not be so in England, because the relation which is legal in the former is prohibited in the latter. Other instances might be cited.

Nor is the difference confined to the case of murder. It extends to other crimes enumerated in the Treaty. Take for example the case of forgery. Its definition is the same in both countries; but in both the acts constituting forgery depend upon particular municipal regulations, and are limited to special cases. Thus in England it is made forgery by particular acts of Parliament to forge a note of the Bank of England, or the public securities of the country, or the stamps on which duties are collected—none of which

constitute the crime of forgery by our laws. Examples of like kind might be cited on our side, and to which might be added many more, extending throughout the whole range of criminal legislation in both countries. Similar observations might with truth be doubtless made, in reference to nearly all the other crimes enumerated in the treaty.

The remarks made by Lord Aberdeen in this connection, in regard to the difficulties which accrued in drawing up the Extradition Treaty between England and France, respecting the term murder in English, and *meurtre* in French, it seems to me are not relevant. There the difficulty grew out of the definition of the two words, which instead of being the same, (as the word murder is in the United States and England,) were of different signification—the latter comprehending several descriptions of crime which the former did not, and which therefore rendered additions to it necessary in order that the treaty might be made reciprocal in its operation between the two countries.

It is obvious from the preceding remarks that the question whether the criminality of the act is to be judged of by the laws of the country where the offence was committed or that where the fugitive may be found, is one of wide extent, and of the first magnitude in the construction of the treaty. We contend that it must be by the laws of the place where the crime was charged to have been committed, and not that where the fugitive is found; and hold that such construction is in strict conformity with the wording and true intent of the treaty; and that any other involves a palpable absurdity. If our construction should be adopted by the Government of Her Majesty, though all those nice discriminations and difficulties alluded to by Lord Aberdeen, and which would make it necessary to reserve the decision for the Home Government, would vanish in this and the numerous other cases, as has been pointed out, on both sides, and which on any other construction would make the extradition portion of the treaty in a great measure nugatory. At all events, it is indispensably necessary that we should know what construction Her Majesty's Government intends to put on the article in question. It would make it indeed a one sided contract, if our Government should continue to place on it the construction we have, while that of Her Majesty adopts the one laid down by the Nassau Judges.

You are accordingly instructed to call again the attention of Her Majesty's Government to the subject, and to urge a speedy decision, in strong and earnest language.

In limiting my former dispatch to the object to which it was confined, it was by no means intended to acquiesce in the construction given by the British authorities to the statute for carrying the extradition article of the treaty into effect, that an indictment was not, of itself, sufficient evidence to warrant the arrest of the fugitive criminal; or that, if it did, the statute was consistent with the provisions of the article. On the contrary, the opposite opinion, it seems to me, is the sound one on both points. I limited it as I did, because I believed that the decision on the point it presented would certainly settle that in reference to the indictment, and that a decision could be more readily made on the former than on the latter. But, as they are intimately united, and as we have been disappointed in getting a speedy and satisfactory answer on the former, you are instructed to call the attention of Her Majesty's Government to, and obtain its decision on, both. Indeed a decision that an indictment is sufficient evidence to warrant the commitment and delivery of the fugitive criminal, would in a great measure decide both points, and supersede the necessity of a formal decision of the other, as the presentment of the grand jury must always be founded on the criminality of the act according to the laws of the place where the crime was committed.

I am, Sir, respectfully,

Your obedient servant,

J. C. CALHOUN.

Dispatch No. 250, Everett to Calhoun, dated Jan. 31, 1845

Recd Feby. 22
No. 250

LONDON, 31 JANUARY, 1845.

John C. Calhoun, Esq.,
Secretary of State,

Sir,

I transmit herewith a copy of a Note addressed by me to Lord Aberdeen in reply to his communication of the 26th December last on the subject of the liberation of Kent, the individual charged with the murder of Captain Halsey of the ship "Thomas Bennett."

You will perceive that I have not continued the discussion as to the facts of the case. Lord Aberdeen having thought it not advisable to call upon the Stipendiary Magistrate for further explanations, we have certainly no reason to be unwilling to leave the matter as it stands on the concurring statement of Mr. Pearce and Mr. Wilding, confirmed as it is by the Coroner of Liverpool in the most material point.

Lord Aberdeen having in a very satisfactory manner declared the resolution of the Government to amend the statute of 6 and 7 Vict. C. 76, so as to bring it into perfect conformity with the Convention, I have pointed out to him all the points suggested by the experience which we have hitherto had of the law. Among these I have, of course, included that which was raised at Nassau as to the sufficiency of an indictment. I have thought that there was considerable advantage in presenting this question as a purely legal one, disembarrassed of all reference to the matters of local consideration under which it arose. In the form in which I have presented the question, it must, I should imagine, be referred to the Law Officers of the Crown, with the other proposed amendments. If they are of opinion that by the law of England an indictment is sufficient ground for Commitment for trial, I do not see how the Government can refuse to instruct the Colonial Authorities accordingly.

The argument of Mr. Levy on the legal sufficiency of an indictment is so clear and satisfactory that I have not attempted to improve it.

After I had prepared my Note to Lord Aberdeen in reply to his of the 26th December last, the professional Agent of the parties interested in the case of Reid *alias* Clinton called upon me and exhibited to me a new set of papers received from America to sustain another application for the extradition of that person. I lost no time in making the proper requisition for his surrender, a Copy of which is herewith transmitted. It is not unlikely that a difficulty may be started, if not on the part of the Government at least by the Counsel for this person, on the ground that a second warrant ought not to issue against the same individual for the same offence. I have not, however, in my Note to Lord Aberdeen thought it expedient to anticipate any such objection.

I am, Sir,

with great respect,

Your obedient Servant,

EDWARD EVERETT.

Transmitted with despatch No. 250,

1°. Mr. Everett to the Earl of Aberdeen, 30th January, 1845, transmitting an abstract from Mr. Levy's speech.

2°. Mr. Everett to the Earl of Aberdeen, 30th January, 1845.

Copy.

1°. DESPATCH 250.

The Earl of Aberdeen,

&c., &c., &c.

The Undersigned, Envoy Extraordinary and Minister Plenipotentiary of the United States of America, has had the honor to receive a Note of the 26th December last from the Earl of Aberdeen, Her Majesty's Principal Secretary of State for Foreign Affairs, on the subject of the liberation by the Stipendiary Magistrate of Liverpool of John Kent, the individual charged with the murder of the Captain of the American ship "Thomas Bennett" on the high seas after the grant of a warrant for his extradition.

As Lord Aberdeen has not thought it expedient to refer to the Stipendiary Magistrate the Note of the Undersigned of the 10th of December, he feels that it would be unavailing to continue the discussion, in reference to the facts of the case.

It never was the intention of the Undersigned to impute to Her Majesty's Government any other purpose than that of conscientiously carrying into effect the Convention concluded between the two Governments for the mutual surrender of fugitives from justice. He feels it his duty, however, to observe that unless this intention is heartily seconded by the subordinate authorities it will be impossible to effect the arrest and extradition of criminals. It is the design of the Convention, in reference to bringing to justice those guilty of certain crimes, to consider the two Countries in some respect as belonging to one jurisdiction; and the experience of the cases which have occurred on this side of the water shews the absolute necessity of that willing co-operation between the Magistrate here and the Agent of the United States, which takes place in the routine of justice between the Officers of one Government. Although the law of 6 and 7 Victoria Cap. 76 is undoubtedly capable of amendment, yet the Undersigned conceives that no amendment will be of avail, if the subordinate authorities in reference to matters within their discretion withold that mutual understanding and concert of action usually extended to colleagues in office.

The Undersigned feels it due to himself to say, that in pointing out the fact that Lord Aberdeen's Warrant for the arrest of Kent, though dated on the 20th of August, was enclosed to the Undersigned in a Note of the 22d nothing was farther from his design, than to ascribe that circumstance to a deliberate intention of delaying the transmission of the document. The Undersigned did not think that an unreasonable time had been consumed at the Foreign Office in acting upon his application of the 17th August. The fact, that the Note transmitting the Warrant was dated on the 22d, was adverted to in his Note of 4th of October, in order to show that Kent's discharge by the Magistrate on the 21st took place before it was possible that the Warrant—though dated on the 20th—could reach Liverpool. The Magistrate notwithstanding this plain indication of dates, having intimated that the warrant might have failed to reach Liverpool in season, in consequence of the absence of the Undersigned from town, it was necessary for him to re-establish the fact.

The Undersigned in both his Notes on this subject intimated that Kent, independent of the application for his extradition, ought to have been returned to the custody from which he was taken by the authorities of Liverpool, under the mistaken supposition that he might be amenable to the English tribunals. Lord Aberdeen in his Note of the 26th of December expresses the opinion, that had this been done by the Government, they would have rendered themselves liable to severe and just reprehension, and that the Magistrate might have exposed himself to an action at law on the part of the prisoner.

It would be presumptuous for the Undersigned to contest with Lord Aberdeen a point of English law, nor will he attempt to enter into the discussion. He will only observe that it seems to be a matter of considerable consequence to ascertain, how far the authorities of a Country will respect and if need be enforce the custody, in which the seamen of foreign vessels have been placed by their Commanders, for the commission of crimes. The Undersigned gathers from the state of the law of this Country, as far as he has been able to learn it and particularly from the recent Statute of 7 and 8th Victoria Cap. 112 Sect. 59 that such custody is considered lawful. If such be the case, it would seem that a seaman could no more be discharged from it, except by due process of law,—than if it were a domestic custody.

In fact the Undersigned apprehends that he does not on this point materially differ from the Magistrate at Liverpool, who says "it was no part of my duty to place Kent

as a prisoner on board an American vessel, particularly in the absence of any request made by the American Authorities." It would seem to follow from this, that if the Vice-Consuls application had been understood as it was intended, the Magistrate might have felt it his duty to grant his assistance in replacing Kent as a prisoner on board the American vessel to be sent home for trial. On an oral representation from a person not in any official station, the same Magistrate detained a seaman brought in irons into Liverpool in 1841, and finally, by direction of the Home Office, gave him up to the Consul to be sent as a prisoner on board the ship from which he had been taken.

But the Undersigned forbears to pursue the discussion on any of the points which have arisen in reference to the case of Kent. He receives with great satisfaction the assurance of Lord Aberdeen, that Her Majesty's Government are determined to employ their utmost endeavors to remove whatever obstacles the law, in its present state, presents so as to bring it into perfect harmony with the Convention. The difficulties which have been already experienced suggest the expediency of the following changes which he submits to Lord Aberdeen's consideration.

The statute seems at present to require a twofold warrant from one of Her Majesty's principal Secretaries of State; first a warrant authorising the arrest and examination of the fugitive; and second a warrant authorising his surrender after such examination has been had and the fugitive has been committed in order to his extradition. The preliminary warrant seems to be wholly superfluous. It is not provided for by the treaty, which on the contrary authorises the arrest and examination to be had on the requisition of the "Ministers, Officers, and Authorities" of the two Governments respectively, and it introduces an unnecessary and embarrassing complication into the process of surrender. No such preliminary Warrant from the Government of the United States is required in America.

Some amendment in the second section of the Act is needed to clear up the uncertainty, which contributed to the failure of the application for the surrender of Clinton. This effect would be produced by enacting that "whenever requisition is made for the extradition of a fugitive from justice, for whose arrest a Warrant has been issued in the United States, the said Warrant with the original depositions on which it was granted or a Copy or Copies of the same certified under the hand of the person or persons issuing the warrant, and attested upon the oath of the party producing them to be a true Copy or Copies may be re-

ceived in evidence of the criminality of the person whose surrender is applied for."

On occasion of the application for the surrender of the fugitives who escaped from Florida charged with the crime of murder, a certified copy of an indictment for that offence, found by the Grand Jury in whose district the crime was committed, was decided by the authorities of Nassau to be insufficient without the evidence on which the indictment was found:—and the Undersigned was advised by Lord Aberdeen, in a conference on this case, that Her Majesty's Government adopted this decision of the Colonial tribunal. The Undersigned however is unable to find in the statute sufficient authority for this decision. The only portion of the law which bears upon the point is comprised in the following passage: "it shall be lawful for any justice or other person having power to commit for trial persons accused of crimes against the laws of that part of Her Majesty's dominions in which such supposed offender shall be found, to examine upon oath any person or persons touching the truth of such charge, and upon such evidence as according to the laws of that part of Her Majesty's dominions would justify the apprehension and commitment for trial of the person accused, if the crime of which he or she shall be so accused had been there committed, it shall be lawful for such justice of the peace or other person having power to commit as aforesaid, to issue his warrant for the apprehension of such person, and also to commit the person so accused to jail there to remain until delivered pursuant to the requisition as aforesaid."

The Undersigned conceives that the terms of the Act, thus set forth were intended comprehensively to provide for the various cases which might occur. While undoubtedly they point out the steps to be pursued, in those cases in which no indictment has been found in the United States, there is nothing in the language of the Act, any more than in the policy in which it is framed requiring that where an indictment has been found, it should not be considered as evidence of criminality.

It would seem to be indeed not so much a question of the interpretation of a treaty as one of fact as to the state of the English law on this point viz't whether an Indictment by a grand jury is such evidence of criminality as would justify the apprehension for trial of the person accused. This question the Undersigned apprehends, must be answered in the affirmative; and instead of any argument of his own to that effect he invites Lord Aberdeen's attention to an extract herewith transmitted from a speech

of Mr. Levy, the delegate from Florida to the Congress of the United States, in which the sufficiency of an indictment is very ably maintained.

The Undersigned would also in this connection ask the attention of Lord Aberdeen to the following extract from an opinion of Sir John Bailey in the case of Clinton:

"I am inclined to think that an Indictment found by a grand jury and a Bench Warrant issued thereon, when properly certified would be sufficient evidence of the guilt of the party accused (provided the offence charged would be a similar offence in this Country) to justify his Committal for Surrender. A certificate of an Indictment having been found, is the only evidence which a judge in this Country ever Acts upon in this Country in granting a Bench warrant for Committal for trial: and it seems to me that the object of the Act in question is merely to give Judges and Magistrates upon the issuing of the Secretary of State's Warrant, the same jurisdiction over the offences enumerated in it committed in America, as they would have had, if they had been committed in this Country. At all events I think for properly carrying out the tenth article of the Treaty it ought to be so, and would be so, if another Act were to be passed. They are clearly some evidence for the Magistrate, but where it can be done it would always be prudent to give other evidence of the truth of the charge and the identity of the offender, as well for the purpose of obtaining the Secretary of State's Warrant as the Magistrate's Warrant for Committal for surrender."

The Court at Nassau, in deciding that an Indictment is an insufficient ground for the surrender of a fugitive, without the evidence on which it was founded, gave as a reason, that what may constitute a crime in the United States may be very far from doing so according to British law. This reason was, as the Undersigned thinks very properly, disavowed by the Earl of Aberdeen, in the conference above alluded to. It is an assumption against the well known fact, that the law of the two Countries is the same in reference to the nature of all the crimes provided for by the treaty; and it is an assumption against the very basis of the policy of extradition. That policy plainly rests on the belief entertained by the contracting parties that the same Acts constitute the same legal offences in the two Countries. It is impossible to suppose, that the two Governments would have framed the Convention, could there have been any reason to think, in the language of the

Court at Nassau, that "what may constitute the crime of murder in Florida may be very far from doing so according to British law."

Should Lord Aberdeen on consulting the law Officers of the Crown be of opinion that there is nothing either in the treaty or the Act of Parliament, which prevents an Indictment or a duly authenticated Copy with a Bench Warrant from being received as evidence of criminality sufficient to warrant the surrender of the fugitive no other step will perhaps be necessary than to give the corresponding instructions to Her Majesty's Colonial Authorities to govern themselves accordingly. In cases which may occur in England, it may be supposed that the Magistrates will receive the requisite directions from Her Majesty's Government as to the interpretation of the law.

The crime of "Embezzlement" is not included among those named in the tenth article of the treaty. This is an offence in reference to which a provision for mutual extradition would be peculiarly useful between Commercial Countries.

Two cases have occurred since the negociation of the treaty of Washington of persons charged with this crime having escaped from the United States to Great Britain. It may deserve Lord Aberdeen's consideration whether in any amendments which may be recommended to the Statute of 6 and 7 Vict. C. 76, it might not be expedient to incorporate a clause extending the provisions of the law to that crime, on condition that a corresponding law be enacted by the Congress of the United States.

In making the above suggestions toward facilitating the surrender of fugitives from justice the Undersigned needs scarcely say, that he is asking for no favor for the United States. It is undoubtedly for the interest of the two Countries, that they should not become places of refuge for each other's Criminals but it is a mutual interest. Supposing the number of crimes to bear a constant proportion to the population and the extent of Commercial business, Great Britain may expect to have occasion to take advantage of this provision of the treaty more frequently than the United States. That her agents are sure of receiving in the United States every desirable facility in the arrest of fugitives from this Country experience has already proved, and the Undersigned hopes that Lord Aberdeen will take the earliest opportunity to procure such amendments of the Statute of 6 and 7 Victoria Cap. 76 as may be needful to secure its convenient execution in conformity with the treaty.

The Undersigned requests Lord Aberdeen to accept the assurance of his distinguished consideration.

[Signed] EDWARD EVERETT.

Grosvenor Place,
30th January, 1845.

Copy.

2°. DESPATCH 250

The Earl of Aberdeen.

&c., &c., &c.

The Undersigned, Envoy Extraordinary and Minister Plenipotentiary of the United States of America has the honor to acquaint the Earl of Aberdeen, Her Majesty's Principal Secretary of State for Foreign Affairs, that he has this day received from the United States additional evidence in reference to the case of Nathaniel Britton alias John Reid, alias John Cormstock Clinton, whose surrender as a fugitive from justice was demanded by the Undersigned on the 12th of September 1843.

Lord Aberdeen will doubtless recollect that, in virtue of a warrant issued from the Home Office, in compliance with the aforesaid requisition, this individual was arrested on the 6th of October 1843; but that chiefly in consequence of doubts which arose in the mind of the magistrate before whom he was brought for examination, as to the construction of the 2d Section of 6 & 7th Victoria Cap. 76, he did not feel himself warranted in committing Clinton for surrender.

The Undersigned has now received both the originals of the warrant issued in America for the arrest of Clinton and of the depositions on which it was founded and also authenticated copies of the same, by the hand of an individual prepared to attest on oath that they are true copies and also to identify the fugitive.

The documents transmitted by the Undersigned with his note of the 12th of September 1843 and referred at the time to the Home Office and the Law Officers of the Crown, having been deemed sufficient to authorize the issue of a warrant for the arrest of the fugitive with a view to his examination, the Undersigned deems it unnecessary to accompany this note with any further evidence of his criminality, and he requests that the Earl of Aberdeen would cause another warrant to issue forthwith for his arrest, the agent of the parties interested being prepared to sustain the charge against him, as required by the opinion of

the Attorney and Solicitor General dated 24 November 1843, as to the construction of the law.

The Undersigned requests Lord Aberdeen to accept the assurance of his high consideration.

[Signed] EDWARD EVERETT.

Grosvenor Place,
30th January, 1845.

Dispatch No. 271, Everett to Calhoun, dated March 3, 1845

Rec'd 21 March
No. 271.

London, 3d March, 1845.

John C. Calhoun, Esquire,
Secretary of State.

Sir,

I received by the last steamer your instructions No. 120 of the 28th January in explanation of No. 99 of the 7th of August, on the construction of the tenth article of the treaty of Washington relative to the extradition of fugitives.

You will have perceived from my note to Lord Aberdeen of the 30th of January, a copy of which was transmitted with my despatch No. 250, that I have anticipated in part your directions in maintaining that an indictment is sufficient evidence of criminality to warrant the surrender of a fugitive. I had intimated to Lord Aberdeen, in the conference of the 20th November which forms the subject of my despatch No. 216, that such was the view of the Government of the United States, which I should take another opportunity of enforcing.

As it was the principal purpose of my note to him of the 30th of January to suggest the various amendments in the Statute of 6 and 7 Victoria C. 76, shown by experience to be required to bring it into conformity with the treaty, I took the opportunity to present the indictment question among them, believing that by being brought forward in this way, as a matter of purely legal construction, it would be more likely to be considered on its merits, than if urged as incidental to the *Nassau* case. Further reflection has confirmed me in the expediency of this course.

In your instructions No. 120 you direct me again to call the attention of Her Majesty's Government to the point, whether on a demand of extradition reference is to be had

to the question whether the criminal acts alleged constitute the offence according to the laws of the country where it was committed or of that where the fugitive has taken refuge; and also to the sufficiency of an indictment; and you add, "Indeed a decision that an indictment is sufficient evidence to warrant the commitment and delivery of the fugitive criminal would, in a great measure, decide both points and supersede the necessity of the other; as the presentment of the grand jury must always be founded on the criminality of the act, according to the laws of the place where the crime was committed."

This is precisely the order in which the two questions presented themselves to my mind, and which led me to adopt the course which I have thus far pursued, in executing your instructions No. 99. Those instructions proceeded principally on the very natural assumption, that the reasoning of the Court at Nassau was sanctioned by the Government. This reasoning however was disavowed by Lord Aberdeen, and the principle that a slave cannot by possibility commit a crime and consequently cannot in any case be a subject of extradition, (a principle which you regarded as lying at the basis of the judgment of the Court of Nassau), was specifically disclaimed by him. This disavowal seemed to reduce the opinion of the Court of Nassau to a simple rejection of an indictment as sufficient evidence of criminality and to present that question as the first for consideration.

In a conference on other business a few days since with Lord Aberdeen, I told him that I had received instructions from you again to call the attention of Her Majesty's Government to the construction of the tenth article of the treaty, and that I hoped he would save me the trouble of doing so, by an early and satisfactory answer to my note of the 30th of January, proposing sundry amendments to the Act of Parliament. He said those amendments had been referred to the Law Officers of the Crown, and that they were he believed thought favorably of, but that he had not yet got their report.

When this report is received, if it admits the principle that an indictment is sufficient evidence, the whole matter will be satisfactorily disposed of;—and on the opposite supposition, the entire question on the construction of the convention will be presented in the most convenient form for discussion.

I am, Sir, with great respect, your obedient Servant,

EDWARD EVERETT.

Dispatch No. 4, McLane to Buchanan, dated Sept. 3, 1845

No. 4

London, September 3d, 1845.

To The Honorable James Buchanan,
Secretary of State, Washington.

Sir,

I had the honor to receive on the 29th August a despatch, marked private, from Mr. Mason, Acting Secretary of State, and will of course be governed in my conduct here by the admonitions it gives.

Up to this time, however, there has been no opportunity of engaging officially in any discussion or conversations whatever with the British Government in regard to the subject to which Mr. Mason's letter relates—Lord Aberdeen and most of the other principal officers of the Government having been absent. It is now expected that Lord Aberdeen will return from the Continent and resume his official duties early next week, when it may be in my power to speak more satisfactorily of the several matters requiring my attention. These, so far as I am able to judge from the examination I have yet been able to make of the archives of the Legation, are quite numerous; many of the most important cases especially those involving indemnity to our citizens for improper "visitation" of American vessels, and relating to the nature of the evidence required here in cases of extradition of fugitives, remaining unsettled. At least two of the cases of the former description arose as early as Mr. Stevenson's Mission, which have run through a lengthened discussion from that time; and, although they are admitted to be cases of trespass, if not of wanton outrage yet upon one pretense or other any indemnity or satisfaction whatever has been withheld. I have never myself been able to acknowledge any substantial distinction between the "right of search" and the notion of "visitation," and the cases, with many others, to which I have referred, abundantly shew that the liability as tresspassers in case of its improper exercise, by which the latter has been attempted to be excused or stripped of the abhorrence in which the right of search is held in the United States, is merely nominal. I think it may well be apprehended that under this practice of "visitation" with a prompt acknowledgment of a tresspass, but a pertinacious withholding of indemnity, the odious right of search even in a more vexatious form will be revived.

There is also strong ground, I think, to apprehend that from the nature of the evidence which, with the design obviously, if not avowedly, of shielding colored persons, it is now altogether probable will be demanded in cases of extradition of fugitives from justice, the provision of the treaty of Washington so far as it concerns the surrender of fugitives from this Country will be a nullity: It seems to be now almost certain that they will not allow the finding of an indictment to be sufficient evidence even to authorise the *arrest* of the fugitive; but will require in all cases the evidence upon which the indictment was found. If a compliance with this demand were practicable, the rule itself would be a clear subversion of the object of the treaty.

I have the honor to be, Sir, very respectfully,

Your obedient Servant,

Louis McLane.

Note from Louis McLane to James Buchanan dated September 18, 1845

Number 7

London 18 September, 1845.

To the Honorable James Buchanan,
Secretary of State,
Washington.

Sir,

I have the honor to transmit herewith a communication from the Earl of Aberdeen received today, transmitting a copy of the recent act of Parliament "for facilitating the execution of the 10th article of the Treaty of Washington, for the apprehension of certain offenders, fugitives from justice."

I have the honor to be, Sir, Very Respectfully,

Your obedient servant,

Louis McLane.

CAP. CXX.

An Act for facilitating Execution of the Treaties with *France* and the United States of *America* for the Apprehension of certain Offenders.

[8th *August* 1845.]

6 & 7 Vict. c. 75
6 & 7 Vict. c. 76

Any Metropolitan Police Magistrate to whom it shall have been signified that a Requisition has been made to deliver up any Person pursuant to the said Convention or Treaty, may issue his Warrant for the Apprehension of such Person in any Part of England.

WHEREAS Two Acts were passed in the Seventh Year of the Reign of Her Majesty, severally intituled *An Act for giving Effect to a Convention between Her Majesty and the King of the* French *for the Apprehension of certain Offenders,* and *An Act for giving Effect to a Treaty between Her Majesty and the United States of* America *for the Apprehension of certain Offenders;* and it is expedient to make Provision for giving more immediate Effect to the Warrant of any One of Her Majesty's Principal Secretaries of State for the better Execution of the said Convention and Treaty respectively: Be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That any Police Magistrate of the Metropolis to whom any One of Her Majesty's Principal Secretaries of State shall have signified, by Warrant under his Hand and Seal, that Requisition has been made, pursuant to the said Convention or Treaty respectively, to deliver up to Justice, in Terms of the said Convention or Treaty, as the Case may be, any Person accused of any Crime rendering him liable to be so delivered up under either of the recited Acts, shall, upon such Evidence as according to the Laws of *England* would justify the Apprehension of the Person so accused if the Crime of which he is accused had been committed in *England* within the Jurisdiction of such Magistrate, issue his Warrant for the Apprehension of such Person, in the Form annexed to this Act, or to the like Effect; and such Warrant may be executed in any Part of *England,* and shall have the same Force and Effect throughout *England* as if

the same had been originally issued or subsequently endorsed by a Justice of the Peace or Magistrate having Jurisdiction in the Place where the same shall be executed, and may be lawfully executed anywhere within *England* by the Constable or Constables to whom the same shall be directed, or who shall be appointed to execute the same, who shall severally have all the Powers and Privileges for the Execution of such Warrant as any Constable duly appointed hath or may have within his Constablewick.

Such Person when apprehended to be brought before a Police Magistrate, who may order his Committal.

II. And be it enacted, That every Person who shall be apprehended under any such Warrant shall be brought with all convenient Speed before the Magistrate by whom such Warrant shall have been issued, or some other Magistrate of the same Police Court, and that such Magistrate may cause the Warrant of Committal of such Person to be drawn up according to the Form given in the Schedule annexed to this Act, or to the like Effect, which shall be good and sufficient in Law to warrant the Persons to whom the same shall be directed to detain such Person in Custody, as directed in the said Warrant, until delivered pursuant to the Act under which he shall have been apprehended.

Act to be construed with recited Acts.

III. And be it enacted, That this Act shall be construed with each of the said Acts separately, and as if this Act had been enacted in each of the said Acts.

Alteration of Act.

IV. And be it enacted, That this Act may be amended or repealed by any Act to be passed in this Session of Parliament.

SCHEDULE to which this Act refers.

Warrant of Apprehension.

Metropolitan Police District, to wit. } To all and each of the Constables of the Metropolitan Police Force.

WHEREAS the Right Honourable

One of Her Majesty's Principal Secretaries of State, by Warrant under his Hand and Seal, hath signified to me, that pursuant to the [Convention made between Her Majesty and the King of the French in the Year One thousand eight hundred and forty-three, *or* the Treaty made between Her Majesty and the United States of America in the Year One thousand eight hundred and forty-two, *as the Case may be*], for the Apprehension of certain Offenders, Requisition hath been duly made to him for delivering up to Justice *A.B.*, late of who is charged with having committed the Crime of [*here specify the Offence*], within the Jurisdiction of [His Majesty the King of the French, *or* the United States of America, *as the Case may be*]:

This is therefore to command you, in Her Majesty's Name, forthwith to apprehend the said *A.B.*, pursuant to an Act passed in the Ninth Year of the Reign of Her Majesty, intituled [*here insert the Title of this Act*], wherever he may be found in England, and bring him before me, or some other Magistrate sitting in this Court, to answer unto the said Charge, for which this shall be your Warrant.

Given under my Hand and Seal at

One of the Police Courts of the Metropolis, this Day of in the Year of our Lord

J.P. (L.S.)

Warrant of Committal.

Metropolitan Police District, to wit. } To A. B., One of the Constables of the Metropolitan Police Force, and to the Keeper of the at

BE it remembered, That on the day of in the Year of our Lord *A.B.*, late of

is brought before me, *J.P.*, One of the Police Magistrates of the Metropolis, sitting, at the Police Court in within the Metropolitan Police District, and is charged before me, for that he the said *A.B.*, on the Day of at within the Jurisdiction of [His Majesty the King of the French, *or* the United States of America, *as the Case may be*], did [*here state the Offence*]: And forasmuch as it hath been shown to me, upon such Evidence as by Law is sufficient to justify the Committal to Gaol of the said *A.B.*, pursuant to an Act passed in the Seventh Year of the Reign of Queen Victoria, intituled [*here insert the Title of* the Sixth and Seventh *Victoria*, Chapter Seventy-five, or Sixth and Seventh *Victoria*, Chapter Seventy-six, *as the Case may require*], that the said *A.B.* is guilty of the said Offence:

This is therefore to command you the said Constable in Her Majesty's Name forthwith to convey and deliver the Body of the said *A.B.* into the Custody of the said Keeper of the at ; and you the said Keeper to receive the said *A.B.* into your Custody in the same and him there safely to keep until he shall be thence delivered pursuant to the Provisions of the said Act; for which this shall be your Warrant.

Given under my Hand and Seal at One of the Police Courts of the Metropolis, this Day of in the Year of our Lord

J.P. (L.S.)

LONDON: Printed by GEORGE E. EYRE and ANDREW SPOTTISWOODE,
Printers to the Queen's most Excellent Majesty. 1845.

With Mr. McLane's
No. 7
Vic. C. 120

Lord Aberdeen presents his compliments to Mr. McLane, and has the honour to transmit to him, for his information, a Copy of the Act of Parliament which was passed in the last Session for facilitating the Execution of the 10th Article of the Treaty of Washington, for the apprehension of certain offenders, fugitives from justice.

Foreign Office
September 17th, 1845

Letter from Ford to Seward,
dated November 15, 1867

The Honorable
William H. Seward
&c. &c. &c.
Rec'd 15 Nov.
Mr. Pratt.

Washington
November 15, 1867

Sir,

Referring to the note you did me the honor to address to me on the 22nd ultimo transmitting in conformity with a request I had made to you on the subject, a warrant by The President of the United States for the apprehension of Frank Sullivan, a British seaman, charged with the Commission of the crime of murder on the high seas, and within the jurisdiction and Dominion of Her Britannic Majesty I have now the honor to inform you that Frank Sullivan has been brought for examination before Commissioner Osborn of the Supreme Court of the United States, Who, having found that the evidence against him was sufficient to sustain the charge, under the provisions of the Extradition Treaty between the Government of the United States and that of Great Britain, has committed him to the custody of the Marshal of the District of New York there to await the orders of the President of the United States.

I transmit herewith to you this evidence relating to the case, and the certificate of Commissioner Osborn and I beg to request that you will be so good as to take the necessary steps in order that a warrant may be issued for the surrender of the accused under the terms of the treaty.

I have the honor to be, with the highest consideration, Sir,

Your most obedient,
humble servant,

FRANCIS CLARE FORD.

UNITED STATES OF AMERICA,
SOUTHERN DISTRICT OF NEW YORK, ss.

I, John A. Osborn, United States Commissioner for the Southern District of New York, Second Circuit, do hereby certify, that the writings annexed to this Certificate are true copies of their respective originals on file, and

remaining of record in my office, and I further certify that the said writings are a copy of all the proceedings had before me in the matter of the extradition of *Frank Sullivan* charged with the crime of murder upon the application of the British Consul under the treaty between the United States and Great Britain.

In testimony whereof, I have caused the seal of office to be hereunto affixed, at the City of New York, in the Southern District of New York, this fourteenth day of November in the year of our Lord, one thousand eight hundred and Sixty Seven.

JOHN A. OSBORN,
U. S. Commissioner.

(Seal)

To Hon. William H. Seward,
Secretary of State,
Washington,
D. C.

To the Honorable Samuel Blachford, Judge of the District Court of the United States for the Southern District of New York, or to any Magistrate or Commissioner, authorized to perform Judicial duties, or to act in the matters hereinafter mentioned.

The Complaint and *Requisition* of *Edward Mortimer Archibald, Esquire* Her Brittanic Majesty's Consul at the port of New York, respectfully shows and sets forth upon Oath—

That as he has been informed and believes and therefore charges one Frank Sullivan, did on the twenty seventh day of September in the year of our Lord one thousand eight hundred and sixty seven in and on board of the Barque *"Maria"* of Yarmouth, Nova Scotia, a vessel owned by and the property of subjects of Her said Brittanic Majesty, and then being on the high seas and within the jurisdiction and dominion of Her said Brittanic Majesty as to the offense herein stated, in and upon one Eben L. Foote, then and there being, feloniously did make an assault and he, the said Eben L. Foote, then and there feloniously, wilfully and of his malice aforethought did kill and murder.

That the said Frank Sullivan is now in the city of New York and within the Southern District of New York. That the crime of which the said Frank Sullivan, has so as aforesaid been guilty would justify his apprehension and commitment for trial if such crime had been committed within

the said City of New York or within the Southern District of New York, or the jurisdiction of the District Court of the United States for the Southern District of New York.

This Complainant Consul as aforesaid therefore asks that a Warrant be issued for the apprehension of the said Frank Sullivan, so that he may be brought before your Honor to the end that the evidence of his criminality may be heard and considered, and if on such hearing the evidence be deemed sufficient to sustain the charge, that your Honor certify the same to the proper Executive Authority in order that a warrant may issue for the surrender and taking to England or some other portion of Her said Brittanic Majesty's dominions, of such offender, under the Treaty between the United States and Great Britain made the Ninth day of August A.D. 1842 and of any Statute or Statutes passed for giving effect thereto, and that he may be given up for that purpose, to this complainant, consul as aforesaid.

E. M. Archibald,
H-B-M Consul.

Sworn before me by the above named Edward Mortimer Archibald Esq. Consul as aforesaid, this Eighteenth day of October A.D. 1867.

Edward Hartnagle,
Notary Public,
New York.

(Notary's Seal)

The President of the United States of America to the Marshal of the United States for the Southern District of New York and to his deputies or any or either of them.

Whereas, complaint has been made under the Treaty between the United States and Her Majesty the Queen of Great Britain and Ireland, concluded and signed at the city of Washington on the Ninth day of August in the year one thousand eight hundred and forty two on oath, before me John A. Osborn Esquire, one of the Commissioners appointed by the Circuit Court of the United States for the Southern District of New York (being a Magistrate) that one Frank Sullivan heretofore on the twenty seventh day of September in the year of our Lord one thousand eight hundred and sixty seven and on board of the Barque *Maria* of Yarmouth, Nova Scotia, a vessel owned by and the property of subject of Her said Brittanic Majesty and then being on the high seas and within the Jurisdiction and

dominion of her said Brittanic Majesty as to the offense therein stated in and upon one Eben L. Foote then and there being feloniously did make an assault, and him the said Eben L. Foote then and there, feloniously, wilfully and of his malice aforethought did kill and murder.

That the said Frank Sullivan is now within the Southern District of New York.

Now therefore we command you forthwith to take the said Frank Sullivan and bring him before me, the said Commissioner or any other Magistrate to the end that the evidence of his criminality may be heard and considered pursuant to the Treaty aforesaid.

Witness my hand & official seal this eighteenth day of October in the year of our Lord one thousand eight hundred and sixty seven.

(Commissioner's Seal) JOHN A. OSBORN.
N. L. Commissioner.
Southern District of N. York.

ENDORSEMENT.

In the matter of the application of H. Bell, Consul for the extradition of Frank Sullivan under the Treaty between the United States & Great Britain.

Note, Seward to Ford
dated January 14, 1868

Department of State,
Washington, 14th Jany. 1868.

Francis Clare Ford Esquire,
&c., &c., &c.

My dear Mr. Ford;

I would be pleased to see you at the Department either to-day or to-morrow as may best suit your convenience.

I am, My dear Mr. Ford,
faithfully yours,

F. W. SEWARD.

Letter, Seward to Ford dated January 15, 1868

Francis Clare Ford, Esquire, Department of State, &c, &c, &c, Washington, 15th Jany 1868

Sir:

I have the honor to acknowledge the receipt of your note of the 11th instant requesting on behalf of Her Majesty's Government, information with reference to the law and practice in this country with regard to the extradition of persons charged with the commission of crimes abroad.

In reply, I have the honor herewith to communicate a copy of the existing extradition treaties between the United States and foreign powers, namely:

Great Britain	1842
France	1843
Additional Article	1845
do do	1858
Hawaiian Islands	1850
Prussia and other States of the German Confederation,	1853
Bavaria	1854
Swiss Confederation	1855
Hanover	1855
Two Sicilies	1856
Austria	1856
Sweden and Norway	1860
Venezuela	1861
Mexico	1862
Hayti	1865
Dominican Republic	1867

and of the two Statutes of the United States for carrying them into effect, and of a Memorandum containing information for those making application for extradition, and of the form of the warrants used in the process, one being the warrant of the President for the arrest of the party charged with the crime and the other the warrant of the Secretary of State for the surrender of the fugitive when the competent judicial authority shall have certified to this Department that the proof of criminality is sufficient. The President's warrant is issued upon the request of the diplomatic representative of the country where the crime may have been committed. The note making the request is usually expected to be accompanied by *prima facie* proof in writing of the crime. The President's warrant

is generally communicated to the diplomatic representative who may have requested the surrender of the fugitive and is by him sent to the place where the fugitive may be found. When arrested, the fugitive is most commonly carried before a United States Commissioner, a judicial officer appointed by the Courts of the United States. The diplomatic representative employs counsel when this may be deemed necessary and the same privilege is allowed to the fugitive. After an examination of the proofs and hearing the arguments of counsel, if the Commissioner shall be of the opinion that there is sufficient cause for the extradition claimed, he certifies that fact to this Department and the warrant of the Secretary of State is then issued for the surrender of the fugitive.

The general rule of law in this country is that no person charged with the commission of a crime in a foreign country can be surrendered upon the application of the Government of that country, unless such surrender shall be provided by treaty. The law of evidence in regard to crimes is believed to be the same in this country as in England. The crimes for which extradition may be demanded are specified in the treaties upon the subject.

Reciprocity is in all such cases expected, but must be secured by treaty. In some of the United States extradition treaties it is stipulated that the citizens or subjects of the parties shall not be surrendered.

Where there is no express reservation of the kind, there would not, it is presumed, be any hesitation in giving up a citizen of the United States to be tried abroad. The Courts of the United States do not have jurisdiction of criminal offenses committed outside of the territorial jurisdiction of the United States, except where such offences are committed upon the high seas (1 Stat. at Large 113); on board an American vessel in a foreign port or within foreign jurisdiction (4 Stat. at Large 115); and where residents and citizens of the United States when abroad correspond with to aid and assist rebels against the United States Government (12 Stat. at Large 696).

We cannot undertake to inform the British Government as to what may be the laws of the different States on this subject; but it may be assumed that the Courts of these States do not exercise jurisdiction over offenses committed outside of their territorial limits and when no part of the offence can be held to have been committed within them.

We are not aware of any special provisions in regard to evidence in such cases. The ordinary rules of evidence would undoubtedly be applicable.

I have the honor to be, with the highest consideration, Sir,

Your obedient servant,

WILLIAM H. SEWARD.

Note from Thornton to Fish dated September 22, 1870

(Department of State—Received Sep 29, 1870)
Ack'd Oct. 19th

The Honorable Hamilton Fish,
&c., &c., &c.

Washington
September 22nd 1870.

Sir,

In compliance with an instruction which I have received from Earl Granville, I have the honour to enclose, for the information of the Government of the United States, two Copies of an Act which was passed by the British Parliament during its recent Session for amending the laws relating to the extradition of criminals, under which Her Majesty will be able, by order in Council, to give effect to any arrangement which She may enter into with Foreign States for the mutual surrender of Criminals, subject to certain restrictions and provisions set forth in the third and fourth clauses of the Act.

Her Majesty is thus empowered by Parliament to enter into arrangements with any Foreign Government for the mutual surrender of criminals, fugitives from justice in their respective States, and I am authorized to inform you that should it appear expedient to the Government of the United States, Her Majesty's Government are prepared to enter into such an arrangement in any form that may seem to be most convenient and effective, subject to and within the provisions of the Act.

I have the honour to be, with the highest consideration, Sir,

Your most obedient, humble Servant

EDW'D THORNTON.

(SEAL)

A. D. 1870.

CHAP. 52.

An Act for amending the Law relating to the Extradition of Criminals. [9th August 1870.]

Whereas it is expedient to amend the law relating to the surrender to foreign states of persons accused or convicted of the commission of certain crimes within the jurisdiction of such states, and to the trial of criminals surrendered by foreign states to this country:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Preliminary.

Short title.

1. This Act may be cited as "The Extradition Act, 1870."

Where arrangement for surrender of criminals made, Order in Council to apply Act.

2. Where an arrangement has been made with any foreign state with respect to the surrender to such state of any fugitive criminals, Her Majesty may, by Order in Council, direct that this Act shall apply in the case of such foreign state.

Her Majesty may, by the same or any subsequent order, limit the operation of the order, and restrict the same to fugitive criminals who are in or suspected of being in the part of Her Majesty's dominions specified in the order, and render the operation thereof subject to such conditions, exceptions, and qualifications as may be deemed expedient.

Every such order shall recite or embody the terms of the arrangement, and shall not remain in force for any longer period than the arrangement.

Every such order shall be laid before both Houses of Parliament within six weeks after it is made, or, if Parliament be not then sitting, within six weeks after the then next meeting of Parliament, and shall also be published in the London Gazette.

Restrictions on surrender of criminals.

3. The following restrictions shall be observed with respect to the surrender of fugitive criminals:

(1.) A fugitive criminal shall not be surrendered if the offence in respect of which his surrender is demanded is one of a political character, or if he prove to the satisfaction of the police magistrate or the court before whom he is brought on habeas corpus, or to the Secretary of State, that the requisition for his surrender has in fact been made with a view to try or punish him for an offence of a political character:

(2.) A fugitive criminal shall not be surrendered to a foreign state unless provision is made by the law of that state, or by arrangement, that the fugitive criminal shall not, until he has been restored or had an opportunity of returning to Her Majesty's dominions, be detained or tried in that foreign state for any offence committed prior to his surrender other than the extradition crime proved by the facts on which the surrender is grounded:

(3.) A fugitive criminal who has been accused of some offence within English jurisdiction not being the offence for which his surrender is asked, or is undergoing sentence under any conviction in the United Kingdom, shall not be surrendered until after he has been discharged, whether by acquittal or on expiration of his sentence or otherwise:

(4.) A fugitive criminal shall not be surrendered until the expiration of fifteen days from the date of his being committed to prison to await his surrender.

Provisions of arrangement for surrender.

4. An Order in Council for applying this Act in the case of any foreign state shall not be made unless the arrangement—

(1.) provides for the determination of it by either party to it after the expiration of a notice not exceeding one year; and,

(2.) is in conformity with the provisions of this Act, and in particular with the restrictions on the surrender of fugitive criminals contained in this Act.

Publication and effect of order.

5. When an order applying this Act in the case of any foreign state has been published in the London Gazette, this Act (after the date specified in the order, or if no date is specified after the date of the publication,) shall, so long as the order remains in force, but subject to the limitations, restrictions, conditions, exceptions, and qualifications, if any, contained in the order, apply in the case of such foreign state. An Order in Council shall be conclusive evidence that the arrangement therein referred to complies with the requisitions of this Act, and that this Act applies in the case of the foreign state mentioned in the order, and the validity of such order shall not be questioned in any legal proceedings whatever.

Liability of criminal to surrender.

6. Where this Act applies in the case of any foreign state, every fugitive criminal of that state who is in or suspected of being in any part of Her Majesty's dominions, or that part which is specified in the order applying this Act (as the case may be), shall be liable to be apprehended and surrendered in manner provided by this Act, whether the crime in respect of which the surrender is sought was committed before or after the date of the order, and whether there is or is not any concurrent jurisdiction in any court of Her Majesty's dominions over that crime.

Order of Secretary of State for issue of warrant in United Kingdom if crime is not of a political character.

7. A requisition for the surrender of a fugitive criminal of any foreign state, who is in or suspected of being in the United Kingdom, shall be made to a Secretary of State by some person recognised by the Secretary of State as a diplomatic representative of that foreign state. A Secretary of State may, by order under his hand and seal, signify to a police magistrate that such requisition has been made, and require him to issue his warrant for the apprehension of the fugitive criminal.

If the Secretary of State is of opinion that the offence is one of a political character, he may, if he think fit, refuse to send any such order, and may also at any time order a fugitive criminal accused or convicted of such offence to be discharged from custody.

Issue of warrant by police magistrate, justice, &c.

8. A warrant for the apprehension of a fugitive criminal, whether accused or convicted of crime, who is in or suspected of being in the United Kingdom, may be issued—

1. by a police magistrate on the receipt of the said order of the Secretary of State, and on such evidence as would in his opinion justify the issue of the warrant if the crime had been committed or the criminal convicted in England; and

2. by a police magistrate or any justice of the peace in any part of the United Kingdom, on such information or complaint and such evidence or after such proceedings as would in the opinion of the person issuing the warrant justify the issue of a warrant if the crime had been committed or the criminal convicted in that part of the United Kingdom in which he exercises jurisdiction.

Any person issuing a warrant under this section without an order from a Secretary of State shall forthwith send a report of the fact of such issue, together with the evidence and information or complaint, or certified copies thereof, to a Secretary of State, who may if he think fit order the warrant to be cancelled, and the person who has been apprehended on the warrant to be discharged.

A fugitive criminal, when apprehended on a warrant issued without the order of a Secretary of State, shall be brought before some person having power to issue a warrant under this section, who shall by warrant order him to be brought and the prisoner shall accordingly be brought before a police magistrate.

A fugitive criminal apprehended on a warrant issued without the order of a Secretary of State shall be discharged by the police magistrate, unless the police magistrate, within such reasonable time as, with reference to the circumstances of the case, he may fix, receives from a Secretary of State an order signifying that a requisition has been made for the surrender of such criminal.

Hearing of case and evidence of political character of crime.

9. When a fugitive criminal is brought before the police magistrate, the police magistrate shall hear the case in the same manner, and have the same jurisdiction and powers, as near as may be, as if the prisoner were brought before him charged with an indictable offence committed in England.

The police magistrate shall receive any evidence which may be tendered to show that the crime of which the prisoner is accused or alleged to have been convicted is an offence of a political character or is not an extradition crime.

Committal or discharge of prisoner.

10. In the case of a fugitive criminal accused of an extradition crime, if the foreign warrant authorizing the arrest of such criminal is duly authenticated, and such evidence is produced as (subject to the provisions of this Act) would, according to the law of England, justify the committal for trial of the prisoner if the crime of which he is accused had been committed in England, the police magistrate shall commit him to prison, but otherwise shall order him to be discharged.

In the case of a fugitive criminal alleged to have been convicted of an extradition crime, if such evidence is produced as (subject to the provisions of this Act) would, according to the law of England, prove that the prisoner was convicted of such crime, the police magistrate shall commit him to prison, but otherwise shall order him to be discharged.

If he commits such criminal to prison, he shall commit him to the Middlesex House of Detention, or to some other prison in Middlesex, there to await the warrant of a Secretary of State for his surrender, and shall forthwith send to a Secretary of State a certificate of the committal, and such report upon the case as he may think fit.

Surrender of fugitive to foreign state by warrant of Secretary of State.

11. If the police magistrate commits a fugitive criminal to prison, he shall inform such criminal that he will not be surrendered until after the expiration of fifteen days, and that he has a right to apply for a writ of Habeas corpus.

Upon the expiration of the said fifteen days, or, if a writ of Habeas corpus is issued, after the decision of the court upon the return to the writ, as the case may be, or after such further period as may be allowed in either case by a Secretary of State, it shall be lawful for a Secretary of State, by warrant under his hand and seal, to order the fugitive criminal (if not delivered on the decision of the court) to be surrendered to such person as may in his opinion be duly authorised to receive the fugitive criminal by the foreign state from which the requisition for the sur-

render proceeded, and such fugitive criminal shall be surrendered accordingly.

It shall be lawful for any person to whom such warrant is directed and for the person so authorised as aforesaid to receive, hold in custody, and convey within the jurisdiction of such foreign state the criminal mentioned in the warrant; and if the criminal escapes out of any custody to which he may be delivered on or in pursuance of such warrant, it shall be lawful to retake him in the same manner as any person accused of any crime against the laws of that part of Her Majesty's dominions to which he escapes may be retaken upon an escape.

Discharge of persons apprehended if not conveyed out of United Kingdom within two months.

12. If the fugitive criminal who has been committed to prison is not surrendered and conveyed out of the United Kingdom within two months after such committal, or, if a writ of Habeas corpus is issued, after the decision of the court upon the return to the writ, it shall be lawful for any judge of one of Her Majesty's Superior Courts at Westminster, upon application made to him by or on behalf of the criminal, and upon proof that reasonable notice of the intention to make such application has been given to a Secretary of State, to order the criminal to be discharged out of custody, unless sufficient cause is shown to the contrary.

Execution of warrant of police magistrate.

13. The warrant of the police magistrate issued in pursuance of this Act may be executed in any part of the United Kingdom in the same manner as if the same had been originally issued or subsequently indorsed by a justice of the peace having jurisdiction in the place where the same is executed.

Depositions to be evidence. 6 & 7 Vict. c. 76.

14. Depositions or statements on oath, taken in a foreign state, and copies of such original depositions or statements, and foreign certificates of or judicial documents stating the fact of conviction, may, if duly authenticated, be received in evidence in proceedings under this Act.

Authentication of depositions and warrants.
29 & 30 Vict. c. 121.

15. Foreign warrants and depositions or statements on oath, and copies thereof, and certificates of or judicial documents stating the fact of a conviction, shall be deemed duly authenticated for the purposes of this Act if authenticated in manner provided for the time being by law or authenticated as follows:

(1.) If the warrant purports to be signed by a judge, magistrate, or officer of the foreign state where the same was issued;

(2.) If the depositions or statements or the copies thereof purport to be certified under the hand of a judge, magistrate, or officer of the foreign state where the same were taken to be the original depositions or statements, or to be true copies thereof, as the case may require; and

(3.) If the certificate of or judicial document stating the fact of conviction purports to be certified by a judge, magistrate, or officer of the foreign state where the conviction took place; and

if in every case the warrants, depositions, statements, copies, certificates, and judicial documents (as the case may be) are authenticated by the oath of some witness or by being sealed with the official seal of the minister of justice, or some other minister of state: And all courts of justice, justices, and magistrates shall take judicial notice of such official seal, and shall admit the documents so authenticated by it to be received in evidence without further proof.

Crimes committed at sea.

Jurisdiction as to crimes committed at sea.

16. Where the crime in respect of which the surrender of a fugitive criminal is sought was committed on board any vessel on the high seas which comes into any port of the United Kingdom, the following provisions shall have effect:

1. This Act shall be construed as if any stipendiary magistrate in England or Ireland, and any sheriff or sheriff substitute in Scotland, were substituted for the police magistrate throughout this Act, except the part relating to the execution of the warrant of the police magistrate:

2. The criminal may be committed to any prison to which the person committing him has power to commit persons accused of the like crime:

3. If the fugitive criminal is apprehended on a warrant issued without the order of a Secretary of State, he shall be brought before the stipendiary magistrate, sheriff, or sheriff substitute who issued the warrant, or who has jurisdiction in the port where the vessel lies, or in the place nearest to that port.

Fugitive criminals in British Possessions.

Proceedings as to fugitive criminals in British possessions.

17. This Act, when applied by Order in Council, shall, unless it is otherwise provided by such order, extend to every British possession in the same manner as if throughout this Act the British possession were substituted for the United Kingdom or England, as the case may require, but with the following modifications; namely,

(1.) The requisition for the surrender of a fugitive criminal who is in or suspected of being in a British possession may be made to the governor of that British possession by any person recognised by that governor as a consul general, consul, or vice-consul, or (if the fugitive criminal has escaped from a colony or dependency of the foreign state on behalf of which the requisition is made) as the governor of such colony or dependency:

(2.) No warrant of a Secretary of State shall be required, and all powers vested in or acts authorised or required to be done under this Act by the police magistrate and the Secretary of State, or either of them, in relation to the surrender of a fugitive criminal, may be done by the governor of the British possession alone:

(3.) Any prison in the British possession may be substituted for a prison in Middlesex:

(4.) A judge of any court exercising in the British possession the like powers as the Court of Queen's Bench exercises in England may exercise the power of discharging a criminal when not conveyed within two months out of such British possession.

Saving of laws of British possessions.

18. If by any law or ordinance, made before or after the passing of this Act by the Legislature of any British possession, provision is made for carrying into effect within such possession the surrender of fugitive criminals who are in or suspected of being in such British possession, Her Majesty may, by the Order in Council applying this Act in the case of any foreign state, or by any subsequent order, either

suspend the operation within any such British possession of this Act, or of any part thereof, so far as it relates to such foreign state, and so long as such law or ordinance continues in force there, and no longer;

or direct that such law or ordinance, or any part thereof, shall have effect in such British possession, with or without modifications and alterations, as if it were part of this Act.

General Provisions.

Criminal surrendered by foreign state not triable for previous crime.

19. Where, in pursuance of any arrangement with a foreign state, any person accused or convicted of any crime which, if committed in England, would be one of the crimes described in the first schedule to this Act is surrendered by that foreign state, such person shall not, until he has been restored or had an opportunity of returning to such foreign state, be triable or tried for any offence committed prior to the surrender in any part of Her Majesty's dominions other than such of the said crimes as may be proved by the facts on which the surrender is grounded.

As to use of forms in second schedule.

20. The forms set forth in the second schedule to this Act, or forms as near thereto as circumstances admit, may be used in all matters to which such forms refer, and in the case of a British possession may be so used, mutatis mutandis, and when used shall be deemed to be valid and sufficient in law.

Revocation, &c. of Order in Council.

21. Her Majesty may, by Order in Council, revoke or alter, subject to the restrictions of this Act, any Order in Council made in pursuance of this Act, and all the provi-

sions of this Act with respect to the original order shall (so far as applicable) apply, mutatis mutandis, to any such new order.

Application of Act in Channel Islands and Isle of Man.

22. This Act (except so far as relates to the execution of warrants in the Channel Islands) shall extend to the Channel Islands and Isle of Man in the same manner as if they were part of the United Kingdom; and the royal courts of the Channel Islands are hereby respectively authorised and required to register this Act.

Saving for Indian treaties.

23. Nothing in this Act shall affect the lawful powers of Her Majesty or of the Governor General of India in Council to make treaties for the extradition of criminals with Indian native states, or with other Asiatic states conterminous with British India, or to carry into execution the provisions of any such treaties made either before or after the passing of this Act.

Power of foreign state to obtain evidence in United Kingdom.

24. The testimony of any witness may be obtained in relation to any criminal matter pending in any court or tribunal in a foreign state in like manner as it may be obtained in relation to any civil matter under the Act of the session of the Nineteenth and twentieth years of the reign of Her present Majesty, chapter one hundred and thirteen, intituled "An Act to provide for taking evidence in Her Majesty's Dominions in relation to civil and commercial matters pending before foreign tribunals;" and all the provisions of that Act shall be construed as if the term civil matter included a criminal matter, and the term cause included a proceeding against a criminal: Provided that nothing in this section shall apply in the case of any criminal matter of a political character.

Foreign state includes dependencies.

25. For the purposes of this Act, every colony, dependency, and constituent part of a foreign state, and every vessel of that state, shall (except where expressly mentioned as distinct in this Act) be deemed to be within the jurisdiction of and to be part of such foreign state.

Definition of terms.

26. In this Act, unless the context otherwise requires,—

"British possession:"

The term "British possession" means any colony, plantation, island, territory, or settlement within Her Majesty's Dominions, and not within the United Kingdom, the Channel Islands, and Isle of Man; and all colonies, plantations, islands, territories, and settlements under one legislature, as herein-after defined, are deemed to be one British possession:

"Legislature:"

The term "legislature" means any person or persons who can exercise legislative authority in a British possession, and where there are local legislatures as well as a central legislature, means the central legislature only:

"Governor:"

The term "governor" means any person or persons administering the government of a British possession, and includes the governor of any part of India:

"Extradition crime:"

The term "extradition crime" means a crime which, if committed in England or within English jurisdiction, would be one of the crimes described in the first schedule to this Act:

"Conviction:"

The terms "conviction" and "convicted" do not include or refer to a conviction which under foreign law is a conviction for contumacy, but the term "accused person" includes a person so convicted for contumacy:

"Fugitive criminal:"

"Fugitive criminal of a foreign state:"

The term "fugitive criminal" means any person accused or convicted of an extradition crime committed within the jurisdiction of any foreign state who is in or is suspected of being in some part of Her Majesty's dominions; and the term "fugitive

criminal of a foreign state" means a fugitive criminal accused or convicted of an extradition crime committed within the jurisdiction of that state:

"Secretary of State:"

The term "Secretary of State" means one of Her Majesty's Principal Secretaries of State:

"Police Magistrate:"

The term "police magistrate" means a chief magistrate of the metropolitan police courts, or one of the other magistrates of the metropolitan police court in Bow Street:

"Justice of the peace:"

The term "justice of the peace" includes in Scotland any sheriff, sheriff's substitute, or magistrate:

"Warrant:"

The term "warrant," in the case of any foreign state, includes any judicial document authorising the arrest of a person accused or convicted of crime.

Repeal of Acts.

Repeal of Acts in third schedule.

27. The acts specified in the third schedule to this Act are hereby repealed as to the whole of Her Majesty's dominions; and this Act (with the exception of anything contained in it which is inconsistent with the treaties referred to in the Acts so repealed) shall apply (as regards crimes committed either before or after the passing of this Act), in the case of the foreign states with which those treaties are made, in the same manner as if an Order in Council referring to such treaties had been made in pursuance of this Act, and as if such order had directed that every law and ordinance which is in force in any British possession with respect to such treaties should have effect as part of this Act.

Provided that if any proceedings for or in relation to the surrender of a fugitive criminal have been commenced under the said Acts previously to the repeal thereof, such proceedings may be completed, and the fugitive surrendered, in the same manner as if this Act had not passed.

SCHEDULES.

FIRST SCHEDULE.

List of Crimes.

The following list of crimes is to be construed according to the law existing in England, or in a British possession, (as the case may be,) at the date of the alleged crime, whether by common law or by statute made before or after the passing of this Act:

Murder, and attempt and conspiracy to murder.
Manslaughter.
Counterfeiting and altering money and uttering counterfeit or altered money.
Forgery, counterfeiting, and altering, and uttering what is forged or counterfeited or altered.
Embezzlement and larceny.
Obtaining money or goods by false pretences.
Crimes by bankrupts against bankruptcy law.
Fraud by a bailee, banker, agent, factor, trustee, or director, or member, or public officer of any company made criminal by any Act for the time being in force.
Rape.
Abduction.
Child stealing.
Burglary and housebreaking.
Arson.
Robbery with violence.
Treats by letter or otherwise with intent to extort.
Piracy by law of nations.
Sinking or destroying a vessel at sea, or attempting or conspiring to do so.
Assaults on board a ship on the high seas with intent to destroy life or to do grievous bodily harm.
Revolt or conspiracy to revolt by two or more persons on board a ship on the high seas against the authority of the master.

SECOND SCHEDULE.

Form of Order of Secretary of State to the Police Magistrate.

To the chief magistrate of the metropolitan police courts *or* other magistrate of the metropolitan police court in Bow Street [*or* the stipendiary magistrate at].

WHEREAS, in pursuance of an arrangement with , referred to in an Order of Her Majesty in Council dated the day of , a requisition has been made to me, , one of Her Majesty's Principal Secretaries of State, by , the diplomatic representative of , for the surrender of , late of , accused [*or* convicted] of the commission of the crime of within the jurisdiction of :

Now I hereby, by this my order under my hand and seal, signify to you that such requisition has been made, and require you to issue your warrant for the apprehension of such fugitive, provided that the conditions of The Extradition Act, 1870, relating to the issue of such warrant, are in your judgment complied with.

Given under the hand and seal of the undersigned, one of Her Majesty's Principal Secretaries of State, this day of 18 .

Form of Warrant of Apprehension by Order of Secretary of State.

Metropolitan police district, [*or* county *or* borough of] to wit. } To all and each of the constables of the metropolitan police force [*or* of the county *or* borough of].

WHEREAS the right Honourable one of Her Majesty's Principal Secretaries of State, by order under his hand and seal, hath signified to me that requisition hath been duly made to him for the surrender of late of accused [*or* convicted] of the commission of the crime of within the jurisdiction of : This is therefore to command you in Her Majesty's name forthwith to apprehend the said pur-

suant to The Extradition Act, 1870, wherever he may be found in the United Kingdom or Isle of Man, and bring him before me or some other [*magistrate sitting in this court], to show cause why he should not be surrendered in pursuance of the said Extradition Act, for which this shall be your warrant.

Given under my hand and seal at [*Bow Street, one of the police courts of the metropolis] this day of 18 .

J. P.

* *Note.*—Alter as required.

Form of Warrant of Apprehension without Order of Secretary of State.

Metropolitan police district, [*or* county *or* borough of] to wit. } To all and each of the constables of the metropolitan police force [*or* of the county *or* borough of].

WHEREAS it has been shown to the undersigned, one of Her Majesty's justices of the peace in and for the metropolitan police district [*or* the said county *or* borough of] that late of is accused [*or* convicted] of the commission of the crime of within the jurisdiction of : This is therefore to command you in Her Majesty's name forthwith to apprehend the said and to bring him before me or some other magistrate sitting at this court [*or* one of Her Majesty's justices of the peace in and for the county [*or* borough] of] to be further dealt with according to law, for which this shall be your warrant.

Given under my hand and seal at Bow Street, one of the police courts of the metropolis, [*or* in the county *or* borough aforesaid] this day of 18 .

J. P.

Form of Warrant for bringing Prisoner before the Police Magistrate.

County [*or* borough] of to wit. } To constable of the police force of and to all other peace officers in the said county [*or* borough] of

WHEREAS late of accused [*or* alleged to be convicted of] the commission of the crime of within the jurisdiction of has been apprehended and brought before the undersigned, one of Her Majesty's justices of the peace in and for the said county [*or* borough] of And whereas by The Extradition Act, 1870, he is required to be brought before the chief magistrate of the metropolitan police court, or one of the police magistrates of the metropolis sitting at Bow Street, within the metropolitan police district [*or* the stipendiary magistrate for]: This is therefore to command you the said constable in Her Majesty's name forthwith to take and convey the said to the metropolitan police district [*or* the said] and there carry him before the said chief magistrate or one of the police magistrates of the metropolis sitting at Bow Street within the said district [*or* before a stipendiary magistrate sitting in the said] to show cause why he should not be surrendered in pursuance of The Extradition Act, 1870, and otherwise to be dealt with in accordance with law, for which this shall be your warrant.

Given under my hand and seal at in the county [*or* borough] aforesaid, this day of 18 .

J. P.

Form of Warrant of Committal.

Metropolitan police district [*or* the county *or* borough of] to wit. } To one of the constables of the metropolitan police force, [*or* of the police force of the county *or* borough of], and to the keeper of the

Be it remembered, that on this day of in the year of our Lord late of is brought before me the chief magistrate of the

metropolitan police courts [*or* one of the police magistrates of the metropolis] sitting at the police court in Bow Street, within the metropolitan police district, [*or* a stipendiary magistrate for ,] to show cause why he should not be surrendered in pursuance of The Extradition Act, 1870, on the ground of his being accused [*or* convicted] of the commission of the crime of within the jurisdiction of , and forasmuch as no sufficient cause has been shown to me why he should not be surrendered in pursuance of the said Act:

This is therefore to command you the said constable in Her Majesty's name forthwith to convey and deliver the body of the said into the custody of the said keeper of the at , and you the said keeper to receive the said into your custody, and him there safely to keep until he is thence delivered pursuant to the provisions of the said Extradition Act, for which this shall be your warrant.

Given under my hand and seal at Bow Street, one of the police courts of the metropolis, [*or* at the said] this day of 18 .

J. P. ,

Form of Warrant of Secretary of State for Surrender of Fugitive.

To the keeper of and to

WHEREAS late of accused [*or* convicted] of the commission of the crime of within the jurisdiction of , was delivered into the custody of you the keeper of by warrant dated pursuant to The Extradition Act, 1870:

Now I do hereby, in pursuance of the said Act, order you the said keeper to deliver the body of the said into the custody of the said , and I command you the said to receive the said into your custody, and to convey him within the jurisdiction of the said , and there place him in the custody of any person or persons appointed by the said to receive him, for which this shall be your warrant.

Given under the hand and seal of the undersigned, one of her Majesty's Principal Secretaries of State, this day of

THIRD SCHEDULE.

Year and Chapter.	Title.
6 & 7 Vict. c. 75.	An Act for giving effect to a convention between Her Majesty and the King of the French for the apprehension of certain offenders.
6 & 7 Vict. c. 76.	An Act for giving effect to a treaty between Her Majesty and the United States of America for the apprehension of certain offenders.
8 & 9 Vict. c. 120.	An Act for facilitating execution of the treaties with France and the United States of America for the apprehension of certain offenders.
25 & 26 Vict. c. 70.	An Act for giving effect to a convention between Her Majesty and the King of Denmark for the mutual surrender of criminals.
29 & 30 Vict. c. 121.	An Act for the amendment of the law relating to treaties of extradition.

LONDON: Printed by GEORGE EDWARD EYRE and WILLIAM SPOTTISWOODE,
Printers to the Queen's most Excellent Majesty. 1870.

Letter from Fish to Thornton dated October 19, 1870

Department of State,
Washington, 19th Oct. 1870.

Edward Thornton K. C. B.
&c. &c. &c.

Sir:

I have the honor to acknowledge the receipt of your note of the 22d ultimo, with which, in compliance with instructions from Earl Granville, you inclose for the information of the Government of the United States two copies of a recent Act of the British Parliament for amending the laws relating to the extradition of criminals, and in which you inform me that Her Majesty's Government are prepared to enter into arrangements with the United States, subject to and within the provisions of the Act referred to.

Your note and the copies of the Act to which it relates will be placed upon file and the important subject will receive careful attention.

I have the honor to be with the highest consideration, Sir,

Your obedient servant,

HAMILTON FISH.

Note from Thornton to Fish dated December 15, 1870

Mr. E. P. Smith
Ans'd 27 Jan.

(Department of State Received Dec 16 1870)

Cannot concede the right to G. B. to alter the definition of the crime, in regard to other treaty. May accept the definition by form here.

The Honorable
HAMILTON FISH
&c. &c. &c.

Washington
December 15th, 1870

Sir,

You may remember that at the beginning of October last we read over together an Act passed by the British Parliament and dated August 9th, 1870 for amending the law relating to the extradition of criminals, and that you

made some observations upon its provisions, which I subsequently transmitted to Lord Granville.

With reference to those observations His Lordship has instructed me to state to you:

1. That it is not necessary to include in the Treaty all the crimes mentioned in the First Schedule to the Act, but that the contracting parties may make what selection from the Schedule they think proper. All that is necessary is that any crime specified in the Treaty should be found also in the Schedule to the Act.

2nd. That any provision in the Treaty by which a fugitive surrendered for one offence mentioned in the Schedule may be tried for another offence, likewise included in the schedule would be inadmissible. Indeed the Treaty if it is to be carried out must contain a provision exactly to the opposite effect.

The Act is express that an order in Council applying the Act shall not be made unless the arrangement is in conformity with the restrictions in the Act on the surrender of criminals; and one of the restrictions is that the Treaty shall provide that a fugitive shall not be detained or tried in a Foreign State for any offence committed previous to his surrender other than the extradition crime proved by the facts on which the surrender was made.

3. That any stipulation in the Treaty authorizing the detention of a fugitive criminal for a longer period than two months before the completion of his surrender would be objectionable.

It does not however follow that if a fugitive criminal be detained for a longer period, he will be entitled to his release; he will be entitled to apply for his release (Sec. 12) but the Court has authority to refuse to grant it if sufficient cause be shown to justify further detention.

4. That the Treaty may prescribe one set of Extradition crimes for Canada, and another for Great Britain provided that each set comes within the List of crimes in the Schedule to the Act.

The Act specifies (Sec. 2) that the operation of the order may be restricted to fugitive criminals who are in, or are suspected of being in Her Majesty's dominions specified in the order.

5. That the Treaty should not stipulate for extradition in the case of crimes within the first schedule of the Act as construed by the Municipal law of the two States at the date of the Treaty.

The Schedule (Schedule 1) expressly declares that the List is to be construed by British law as existing at the date of the Commission of the crime.

Otherwise it would happen that a person might be surrendered for an Act which did not constitute a crime at all. The inconvenience that the Treaty stipulations must be made subject to any subsequent modifications of the Municipal laws of the contracting parties is inevitable.

6. That there would be no objection to a stipulation that in order to found an extradition for larceny, the stolen property should amount to a minimum value fixed by the Treaty.

A modification to this effect would in the opinion of Her Majesty's Secretary of State for the Home Department be such a modification as is contemplated by the Act.

Provided that Larceny of property of a certain minimum value would constitute larceny according to British Law existing at the date of the Commission thereof, the Act would be satisfied.

7. That the crime of kidnapping male adults is not included in the crime of "abduction" which applies exclusively to females, or of "childstealing," and therefore cannot be constituted an extradition crime by the Treaty.

I have the honour to be, with the highest consideration, Sir,

Your most obedient,
humble Servant

EDW'D THORNTON.

Note from Fish to Thornton dated January 27, 1871

Department of State,
Washington, 27th Jan'y, 1871.

Sir Edward Thornton K. C. B.
&c. &c. &c.

Sir:

I have the honor to acknowledge your note of the 15th ultimo, in relation to the British "Extradition Act, 1870," conveying certain explanations which I had requested with a view to the proposed revision of the Extradition clauses in the treaty of 1842. After considering that act as explained by Lord Granville, I have the honor to state that while it would be agreeable to this Government, and in my

judgment advantageous to both countries to enlarge our treaty engagements so as to embrace many of the crimes specified in the schedule annexed to that act, defining those crimes either by reference to the Common law of England or to the statutes of Great Britain now in force, it is impossible for the United States to stipulate for the extradition of any persons within their protection for crimes which may be created or changed in their definition by foreign legislation by enactments subsequent to our entering into the arrangements. For the United States to do this would be to abdicate to that extent their sovereignty. We do not, indeed anticipate any such abuse of its power by the Parliament of Great Britain as that, in the language of Lord Granville, "it would happen that a person might be surrendered for an act which did not constitute a crime at all." It is enough that the first schedule of the Extradition Act of 1870, declares that the list of crimes is to be construed by statute which may be made after the passing of the Act, and consequently, after the date of a treaty.

This Government understands the 27th section of the "Extradition Act, 1870" as giving continued effect to the existing engagements for the surrender of criminals. Imperfect as they are in view of the long coterminous frontier between British North America and the United States, we must be content to suffer the inconvenience until Parliament shall put it in the power of Her Majesty's Government to propose a more comprehensive and acceptable arrangement.

I have the honor to be, with the highest consideration, Sir,

Your obedient servant,

HAMILTON FISH.

Note from Thornton to Fish
dated January 30, 1871

Washington, January 30th, 1871.

The Hon'ble Hamilton Fish
&c.——&c.——&c.

Sir,

I have the honour to acknowledge the receipt of your Note of the 27th instant, in which you make some observations upon certain points of the British "Extradition Act of 1870, a copy of which I shall have much pleasure in forwarding to Earl Granville. In doing so however I cannot

but express my opinion that the condition contained in the preamble to the list of crimes that these are to be construed according to the law existing in England, or in a British possession, at the date of the alleged crime, refers only to criminals who may be found in Her Majesty's Dominions and whose extradition may be demanded by the United States, and not to those who have fled from England and are found in this country.

I have the honour to be, with the highest consideration, Sir, Your most obedient humble Servant,

EDW. THORNTON.

Note from Thornton to Fish dated April 17, 1871

Mr. Smith Apr 17
Mr. Roatt & Mr. Smith

(Department of State Received Apr 17 1871)

This note was received in Index Room Oct. 13 from Mr. E. P. Smith.

Washington April 17th, 1871.

The Hon'ble Hamilton Fish
&c.——&c.——&c.

Sir,

I had the honour to forward to Lord Granville a copy of your Note of the 27th of January last, in which you expressed some doubts as to the power of the Government of the United States to enter into enlarged stipulations with Her Majesty's Government relative to Extradition, owing to the provisions of the recent British "Extradition Act 1870." I have now received from Lord Granville a communication upon the subject, which I hope will be entirely satisfactory to you.

From your Note above-mentioned it would appear that the objection taken to the Extradition Act is that "it is impossible for the United States to stipulate for the extradition of any persons within their protection for crimes which may be created or changed in their definition by Foreign Legislation by enactments subsequent to our entering into the arrangements."

Lord Granville authorizes me to say that it is a misapprehension to suppose that the British Extradition Act has such an effect. He states that the Act does not interfere with the jurisdiction or practice of the Magistrates of

the United States in dealing with Extradition cases, when a claim is made that a fugitive be surrendered by the Government of the United States. In such cases the Magistrates in the United States would investigate the claim as they have hitherto done in accordance with the provisions of the Acts of Congress of August 1848 and June 1860. A fugitive would not, in the words of the Treaty of 1842, be surrendered, except "upon such evidence of criminality as *according to the laws of the place where the criminal should be found*, would justify his apprehension and commitment for trial if the crime had been there committed."

In compliance with Lord Granville's instructions I have now the honour to enclose a Draft of a Treaty founded upon the "Extradition Act 1870," and to inform you that it has been thought most convenient to state to the several Powers generally the views of Her Majesty's Government, leaving it to each Power to suggest any amendments which it may desire. Such suggestions would be carefully considered, for Her Majesty's Government do not hold to the precise terms of the Draft; and though of course it would be more convenient if the same Treaty were to exist with all Powers, Her Majesty's Government do not exclude the idea of adapting the terms of the Treaty with each Power, as far as practicable in each instance, to the views of the other party.

At page 3 of the enclosed Draft Treaty you will find a Provision similar to that contained in the Treaty of 1842, acting under which the Magistrates in the United States, in investigating a claim for extradition, would take care to see that the crime charged was one of those named in the Treaty, and was a crime recognized by the law of the United States. It seems to Her Majesty's Government that this is an ample safeguard against the danger apprehended in Your Note of the 27th of January last.

With regard to claims for surrender by the British Government, the practice will be substantially the same as it was before the Extradition Act of 1870 was passed, and English Magistrates will enquire, as they have hitherto done, whether the evidence of criminality is such as would justify a commitment for trial in England if the crime had been committed there.

The United States in 1848 set the good example of passing a general Extradition Act to give effect to existing and future Treaties, and Great Britain has followed that example by passing the Extradition Act of 1870.

There can be no reason why the two countries should not agree to an enlarged Treaty which should be applicable

to all and any of the crimes named in the Schedule; and there is nothing in the Act of 1870 which would prevent the Legislature of either country either from altering the definition of such crimes, or from excepting any of them from the operation of the Treaty, or which would prevent the Magistrates in either country from dealing with the cases of Extradition of Prisoners in accordince with the Law of the respective countries in existence at the time when the application for Extradition is made. For example,—if a particular Act or a particular fraud constituted a criminal offence under the Bankruptcy Laws in England, which was not criminal in America, the American Magistrate would refuse to surrender the Bankrupt on application by England, and *vice versa.*

The Act, in short, in no way interferes with the old practice, which is continued by the Draft Treaty at page 3.

Lord Granville will be glad to learn the views of the Government of the United States with regard to the enclosed Draft Treaty, merely remarking in the mean-time that the exception in Article I as to the surrender of native subjects or citizens, must, as His Lordship apprehends, be omitted in a Treaty between the United States and Great Britain; for not only is the language of the two countries the same, but the admission of a plea of nationality as a bar to surrender would give rise to such difficulties as would probably neutralize the benefit of the Treaty.

I have the honour to be, with the highest consideration,

Sir,

Your most obedient humble servant,

EDW'D THORNTON.

Note, Fish to Thornton dated April 18, 1871.

Department of State,
Washington, 18th April, 1871.

Sir Edward Thornton, K. C. B.
&c. &c. &c.

Sir:

I have the honor to acknowledge the receipt of your note of the 17th instant, with accompanying papers relating to the proposed enlargement of existing stipulations with Her Majesty's Government upon the subject of Extradition,

and to inform you that your communication will receive early attention.

I have the honor to be with the highest consideration, Sir,

Your obedient servant,

HAMILTON FISH.

Digest of British Draft of Extradition Treaty, made sometime after April 18, 1871

DRAFT.

March, 1871.

Draft of a Treaty of Extradition.

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, and ~~His Majesty the King of~~ , having judged it expedient, with a view to the better administration of justice, and to the prevention of crime within their respective territories and jurisdictions, that persons charged with or convicted of the ~~crimes~~ hereinafter enumerated, and being fugitives from justice, should, under certain circumstances, be reciprocally delivered up; ~~Their said Majesties~~ have named as their Plenipotentiaries to conclude a Treaty for this purpose, that is to say:

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland,

And ~~His Majesty the King of~~ .

Who, after having communicated to each other their respective full powers, found in good and due form, have agreed upon and concluded the following Articles:—

ARTICLE I.

It is agreed that Her Britannic Majesty and ~~His Majesty the King of~~ shall, on requisition made in their name by their respective Diplomatic Agents, deliver up to each other reciprocally, any persons, [**omit** except native subjects or citizens of the Party upon whom the requisition may be made,] who, being accused or convicted of any of the crimes hereinafter specified, committed within the

jurisdiction of the requiring Party, shall be found within the territories of the other Party:—

1. Murder, or attempt or conspiracy to murder.

2. Manslaughter.

3. Counterfeiting or altering money, or uttering counterfeit or altered money.

4. Forgery, counterfeiting, or altering, or uttering what is forged or counterfeited or altered.

5. Embezzlement or larceny. **limitation**

6. Obtaining money or goods by false pretences.

Am 85—859 Eng

7. Crimes by bankrupts against bankruptcy law.

8. Fraud by a bailee, banker, agent, factor, trustee, or director, or member or public officer of any company **which fraud is** made criminal by any law for the time being in force, **in the country seeking the extradition.**

9. Rape.

10. Abduction. **Kidnapping**

11. Child stealing.

12. Burglary or housebreaking.

13. Arson.

14. Robbery with violence.

15. Threats by letter or otherwise with intent to extort.

16. Piracy by law of nations, **committed on board a vessel belonging to the Nation seeking to extradite**

17. Sinking or destroying a vessel **of the Nation seeking the surrender** at sea, or attempting or conspiring to do so.

18. Assaults on board a ship on the high seas with intent to destroy life or to do grievous bodily harm. **James**

19. Revolt or conspiracy to revolt by two or more persons on board a ship on the high seas against the authority of the master. **James**

This goes to the evidence not to the nature or definition of the crime

Provided that the surrender shall be made only when, in the case of a person accused, the commission of the crime shall be so established as that the laws of the country where the fugitive or person so accused shall be found would justify his apprehension and commitment for trial if the crime

had been there committed; and, in the case of a person alleged to have been convicted, on such evidence as, according to the laws of the country where he is found, would prove that he had been convicted.

As defined by the laws of the place where the accused shall be found shall be so established as that such law would justify.

Amendments Proposed to British Draft of Extradition Treaty.

ART. 1. Omit words "except native ~~citizens or~~ subjects or citizens of the party upon whom the requisition may be made."

After "embezzlement or larceny," add where the sum ~~the~~ or value is not less than $1000.00 or £200 omit "obtaining goods or money by false pretences—."

~~For the 8th clause add~~

In the *proviso* page 3, after "crime had been there committed insert *"and the acts or omissions proved constitute, by the law of the place where the* ~~previous examination is had~~ *accused was arrested, one or more of the offences hereinbefore enumerated as the same shall be defined by such local law."*

This is required to meet the diversities of criminal legislation in our States and territories, the United States having a very limited criminal code and no *federal* common law, civil or criminal.

ARTICLE 2. For consideration. Insert after first paragraph. Where it shall be certified by the Minister or other Diplomatic representative of the United States that a warrant of arrest and such depositions ~~and~~ or statements as are above described are, as he is informed by his government, in transit to his address but are not yet received and that he is apprehensive the accused will receive information of the proceedings and elude arrest, the said Secretary of State shall signify the facts to some Police Magistrate and require him to issue his warrant for the arrest of the fugitive and his detention until a sufficient time not exceeding ..... days to permit the arrival of the documents in transit to the ~~Minister of~~ Diplomatic representative of the United States. Upon the presentation of such documents and a requisition by such Representative the Secretary shall ~~trans~~ proceed as before provided by this article, and in default of the presentation thereof

within ..... days the ~~prisoner~~ accused shall be discharged ~~and~~

On page 5 after "fifteen days" in line 3rd insert "unless by writing subscribed in the presence of the Magistrate the prisoner shall request an earlier surrender."

A prisoner may prefer to be put in the course of transit to the United States for without a view to speedy trial rather than to endure detention in Great Britain.

ARTICLE 3 PAGE 6. Within the ~~territorial~~ jurisdiction of the United States the manner of proceeding shall be as follows.

In line 7 for "Minister for Foreign Affairs" substitute Secretary of State

(Course to be pursued in the United States)

The Secretary of State shall by ~~writing~~ certificate under his hand and the seal of the Department addressed to any Justice of the Supreme Court of the United States, any Circuit Judge or Judge or the District Court of the United States in any District, any judge of the Supreme or Superior Court in any state or to any commissioner specially appointed to execute the acts of Congress for giving effect to treaties for the Extradition of criminals. The certificate shall signify the making of a requisition by the ~~M~~ Diplomatic agent of her Brittanic Majesty and that **such certificate** is issued to the end that the above named officers or any of them may cause the necessary proceedings ~~may~~ **to** be had in order that the evidence of the criminality of the accused may be heard and considered and certified to the Secretary of State that if deemed sufficient to sustain the charge a warrant may issue for his surrender to the agent of her Brittanic Majesty.

On the receipt of such certificate from the Secretary of State, and on the production of such evidence as would in the opinion of the magistrate justify the issue of the warrant if the crime had been committed at the place where the accused may be found, he shall issue his warrant accordingly.

When the fugitive shall have been apprehended in virtue of such warrant he shall be brought before the magistrate who issued it or ~~at the election of the fugitive~~ before any other of the magistrates in this article named most adjacent (convenient) to the place of his arrest or of his residence as the fugitive may elect and design. If the evidence to be then produced shall be such as to justify, according to the law of the place where the arrest

made, the commital for trial of the prisoner if the crime of which he is accused had been there committed the magistrate shall commit him to prison to await the warrant of the Secretary of State for his surrender sending immediately to the Secretary of State a certificate of the committal and a report upon the case.

~~Continue~~ Continue as in Article 2nd with the amendments on page 5, ~~substi.~~ Insert~~ion~~ the United States in line 7 of page 5. In line 16 strike out *Police* before Magistrate, also in line 21.—In line 29, et seq. strike out the final sentence.—For England in line 18 substitute "the place where the prisoner was arrested."

The last paragraph on page 5 as amended to take the place of that on page 6.

Page 7—omit Article 4—the case being provided for by first amendment to Article 2.

Or perhaps it will be better to retain Article 4—with amendments viz.

A fugitive criminal may however be apprehended under a warrant issued by any of the officers hereinbefore enumerated as competent in the two countries respectively to commit for surrender, on such information in complaint &c. &c. down to *Provided however* inclusive, when insert, that ~~such~~ it be certified to such officer by the ~~proper~~ Secretary of State [for Foreign Affairs]' that the accused has been changed by the Diplomatic representative of the country from which he is a fugitive with one of the crimes herein enumerated, ~~and~~ although the said representative is at the time unable to produce the evidence made requisite in the preceding articles, and further provided &c &c strike out *fourteen.*

Papers authorizing a requisition may be at San Francisco and it will require *at least* 20 days for them to reach London, while friends may telegraph to the fugitive in two days.

In Article 5, strike out "~~the~~ in the United Kingdom"

ARTICLE 7. Omit the whole.

ARTICLE 8. Strike out all of after "character" in the 5th line.

ARTICLE 9. ~~Add~~ in ~~place~~ ~~of~~ the proviso, after witness proving the signature and the official character of the person who signed or certified the document or by the certificate under his official seal of the Secretary of State of the United States or Her Majesty's principal Secretary of State for Foreign Affairs to the genuineness of the signa-

ture and that the document is ~~so~~ duly authenticated ~~as to be admissible in evidence in~~ according to the law the country where such authentication is made.

ARTICLE 12. After "refuge" in 4th line, insert or if a warrant for his arrest upon a criminal charge has been obtained in good faith, with intent to proceed thereupon without delay.

ARTICLE 13. In second line after arrest insert "that may be material in making proof of the crime."

Omit all after the first sentence thus amended.

ARTICLE 14. Each of the contracting parties shall defray the expenses occasioned by the arrest detention and conveyance to its own territory of the persons whose surrender it ~~shall~~ may request.

ARTICLE 15. After "chief consular office of the other" strike out "at the seat of government." [The Chief Consular Officer of the U. S. in Canada is at Montreal]

In third paragraph strike out all after "Chief Authorities."

NEW DRAFT OF ARTICLE 4.

A fugitive criminal may however be apprehended under a warrant issued by any of the officers hereinbefore mentioned as competent in the two countries respectively to commit for surrender on such information ~~and~~ or complaint and such evidence or after such proceedings as would in the opinion of the person issuing the warrant justify the issue of a warrant if the offence had been committed in that part of the dominions of the two contracting parties where he exercises jurisdiction. Any person issuing a warrant under this article without having had the fact of a requisition by ~~the~~ a Diplomatic agent of the foreign government certified to him by ~~a~~ the proper Secretary of State shall forthwith send a report of the fact of such issue together with the evidence and information or complaint, or certified copies thereof to the Secretary or State. ~~who may if he think~~. If within such reasonable time as, with reference to the circumstances of the case, the Secretary of State may fix ~~the~~ a requisition be not made for the surrender of the accused in accordance with the preceding articles, the Secretary of State shall ~~such~~ certify such fact to the person having the custody of ~~forthwith~~ the prisoner who shall thereupon be forthwith discharged. In the meantime he shall be detained in such manner as the laws of the country in which he is arrested may provide. ~~A written state-~~

~~ment~~ requisition by the Diplomatic agent of one of the contracting parties averred to be made by the direction of his government to the Secretary of State for Foreign Affairs of the other party that the documents required by the preceding articles to support a requisition for surrender are in the course of transmission to him shall when certified to the authority competent to issue a warrant of arrest be deemed sufficient information for the issuing of a warrant upon which such proceedings shall be had as are hereinbefore provided.

A person arrested in ~~pursuance of~~ consequence of such statement as is last above mentioned and discharged at the expiration of the time fixed by the Secretary of State of the one by reason of the failure of the Diplomatic agent of the other party to produce adequate testimony to warrant the arrest shall be ~~entitled~~ paid his reasonable damages by the government whose agent procured the arrest, such damages to be assessed by the Secretary of State.

January 18, 1873.

This copy was used by Sir Ed. Thornton & me in our interview today & the red ink alterations marked on it were those proposed by me and discussed between us. He to report them to the Govt. & if agreed to I am to consult some senator with the view of ascertaining whether it will be advisable to return the treaty to the Senate.

*No. 5. Limitation of £200 $1000 should in my opinion be insisted on.

x

UNITED STATES.

DRAFT.

March 1872.

Draft of a Treaty of Extradition between Great Britain and the United States of America.

HER Majesty the Queen of the United Kingdom of Great Britain and Ireland, and the United States of America, having judged it expedient, with a view to the better administration of justice, and to the prevention of crime within their respective territories and jurisdictions, that persons charged with or convicted of the crimes hereinafter enumerated, and being fugitives from justice, should, under certain circumstances, be reciprocally delivered up; They have named as their Plenipotentiaries to conclude a Treaty for this purpose, that is to say:

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, the Right Honourable Sir Edward Thornton, a Member of Her Majesty's Privy Council, Knight Commander of the Most Honourable Order of the Bath, Her Envoy Extraordinary and Minister Plenipotentiary to the United States of America;

And the President of the United States of America, Hamilton Fish, Esquire, Secretary of State of the United States;

Who, after having communicated to each other their respective full powers, found in good and due form, have agreed upon and concluded the following Articles:—

ARTICLE I.

It is agreed that Her Britannic Majesty and the United States of America shall, on requisition made in their name by their respective Diplomatic Agents, deliver up to each other reciprocally, any persons who, being accused or convicted of any of the crimes hereinafter specified, committed within the jurisdiction of the requiring Party, ∧ shall be found within the territories of the other Party:—

1. Murder, or attempt or conspiracy to murder.

F

5. Embezzlement and Larceny to be limited to one thousand dollars for Great Britain and Dependencies other than Canada and five hundred dollars for Canada.

8½ Rape.

ejusdem generis

2. Manslaughter.

3. Counterfeiting or altering money, or uttering counterfeit or altered money.

4. Forgery, counterfeiting, or altering, or uttering what is forged or counterfeited or altered.

~~*5. Embezzlement or larceny.~~

~~x6. Obtaining money or goods by false pretences.~~

7. Crimes by bankrupts against bankruptcy law.

8. Fraud by a bailee, banker, agent, factor, trustee, or director, or member or public officer of any company, and which fraud is made criminal by any law for the time being in force.

9. Abduction.

10. Child stealing.

11. Burglary or housebreaking.

12. Arson.

13. Robbery with violence.

14. Threats by letter or otherwise with intent to extort.

15. Piracy by law of nations committed on board of or against a vessel belonging to the nation asking extradition.

16. Sinking or destroying such a vessel at sea, or attempting or conspiring to do so.

17. Assaults on board such a ship on the high seas with intent to destroy life or to do grievous bodily harm.

18. Revolt or conspiracy to revolt by two or more persons on board such a ship on the high seas against the authority of the master.

Provided that the surrender shall be made only on evidence of such acts as by the law of the place where the fugitive or person accused shall be found, constitute one or more of the offences hereinbefore enumerated, and are so established that such local law would justify his apprehension and commitment for trial if the crime had been there committed; or, in the case of a person alleged to have been convicted, on such evidence as, according to the law of the place where he is found, would prove that he had been convicted of one or more of those offences as defined by such local law.

United States Draft March, 1872

EXTRADITION

Mr. Fish's Copy: showing the Amendments in the New British Draft of March 1873: also the Amendments proposed by Senators Edmonds, Thurman, Conkling, Howe, Bayard, Casserley. Corrected to April 14, 1873.

Memorandum

Amendments by Mr. Fish are marked ..... (F.)

[These Amendments were all discussed by Mr. Fish in his interview with Sir Edward Thornton Jany 18, 1873]

Amendments by Mr. Edmonds are marked ..... (E.)

Amendments by Mr. Thurman are marked ..... (T.)

Amendments by Mr. Edmonds and Mr. Thurman are marked ..... (E. and T.)

Amendments by Mr. Conkling are marked ..... (C.)

Amendments by Mr. Howe are marked ..... (H.)

Amendments by Messrs. Bayard and Casserley are marked ..... (B-C)

The Amendments in the New British Draft are marked "New British Draft" and are on the blank pages opposite the text. The nature & character of these amendments are correctly described in Sir E. Thornton's Note of April 10, 1873—namely, that they are identical with those discussed in the interview of Jany 18th, except

Art. I. Crime 5—A slight change of language.

Art. VIII. A provision added as to Colonial Documents.

Art. XI line 2 "out on bail" added, and "or" retained.

Art. XIII. An entirely new substitute added.

J.V.B.D. Ap. 14/73.

New British Draft

To 5 add "Where the value is not under five hundred dollars or one hundred pounds, when Extradition is sought by or from Canada, or other British Possessions in N. A. North of the U. S. or one thousand dollars, or two hundred pounds, when it is sought by or from any other of Her Majesty's Dominions except Canada, or other British Possessions in N. A. north of the U. S.

UNITED STATES.

DRAFT.

March 1872.

Draft of a Treaty of Extradition between Great Britain and the United States of America.

HER Majesty the Queen of the United Kingdom of Great Britain and Ireland, and the United States of America, having judged it expedient, with a view to the better administration of justice, and to the prevention of crime within their respective territories and jurisdictions, that persons charged with or convicted of the crimes hereinafter enumerated, and being fugitives from justice, should, under certain circumstances, be reciprocally delivered up; They have named as their Plenipotentiaries to conclude a Treaty for this purpose, that is to say:

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, the Right Honourable Sir Edward Thornton, a Member of Her Majesty's Privy Council, Knight Commander of the Most Honourable Order of the Bath, Her Envoy Extraordinary and Minister Plenipotentiary to the United States of America;

And the President of the United States of America, Hamilton Fish, Esquire, Secretary of State of the United States;

Who, after having communicated to each other their respective full powers, found in good and due form, have agreed upon and concluded the following Articles:—

Strike out "6" obtaining money or goods by false pretences.
Renumber "7" "6"; and "8" "7" respectively.
Add "8 Rape."

(B-C) "territorial" before jurisdiction line 7. O
(B-C) jurisdiction for territories line 8. X

(E.) After the words "convicted of" (line 5) insert the words "and not punished for." O

***(C) Crimes on the high seas cant be in the jurisdiction.**

(T and E.) After the word "Party" (line 7) insert in parenthesis "(they being actually within such jurisdiction when the crime was committed." X

(C) How could some of the crimes which follow be committed in such jurisdiction?

(F) Embezzlement and Larceny to be limited to one thousand dollars for Great Britain and dependencies other than Canada and five hundred dollars for Canada.

(E) As to bankrupts—strike out. O

(E) After "company" in line 21 insert "in the wilful conversion of money or other property."

(F) 8½. Rape.

(C) Strike out "with violence" line 27. X
(E) Lines 28 and 29. Strike out. O

(B-C) or murder, or attempt or conspiracy to murder or manslaughter, line 32. Provided for under No. 1. O

ARTICLE I.

It is agreed that Her Britannic Majesty and the United States of America shall, on requisition made in their name by their respective Diplomatic Agents, deliver up to each other **prosecuted** reciprocally, ~~any~~ persons who, being accused or convicted of Λ **and not punished for** any of the crimes hereinafter specified, committed within the Λ **territorial** jurisdiction of the requiring Party,* Λ shall be found within the **jurisdiction** ~~territories~~ of the other Party:—

*** When such crimes are subject to infamous punishment by the requiring party O**

*** (otherwise petty larceny would be an extradition offence) (B-C)**

1. Murder, or attempt or conspiracy to murder.
2. Manslaughter.
3. Counterfeiting or altering money, or uttering counterfeit or altered money.
4. Forgery, counterfeiting, or altering, or uttering what is forged or counterfeited or altered.

F ~~5. Embezzlement or larceny.~~

F ~~6. Obtaining money or goods by false pretences.~~

7. Crimes by bankrupts against bankruptcy law.
8. Fraud by a bailee, banker, agent, factor, trustee, or director, or member or public officer of any company Λ and which fraud is made criminal by any law for the time being in force.
9. Abduction.
10. Child stealing.
11. Burglary or housebreaking.
12. Arson.
13. Robbery ~~with violence.~~

~~14. Threats by letter or otherwise with intent to extort.~~

15. Piracy by law of nations committed on board of or against a vessel belonging to the nation asking extradition.Λ

(E) Insert before "Sinking" in line 33 the word "criminal" X

(E) Lines 36 and 37 strike out "or to do grievous bodily harm." X

(B-C) "criminal"

(H) If you enumerate the crimes for which extradition may be had I could hardly criticise your enumeration. I should incline to retain the text of lines 15, 16 and 17 and the text of line 21, and to omit lines 28 and 29. But why not let the municipal law of each country define its crimes, and determine for what criminals it will make requisition, and let the Treaty declare what criminals shall not be surrendered. Do we care to except other than political offenders? Que. Sec. 15 lines 30 & 31 for an American vessel piracy be committed agst a British vessel, where shall the offender be tried? The U. S. may claim because committed on her vessel, and G. B. may claim because against hers.

(B-C) "crimes or"

16. Λ Sinking or destroying such a vessel at sea, or attempting or conspiring to do so.

17. Assaults on board such a ship on the high seas with intent to destroy life ~~or to do grievous bodily harm.~~

18. Revolt or conspiracy to revolt by two or more persons on board such a ship on the high seas against the authority of the master.

Provided that the surrender shall be made only on evidence of such Λ acts as by the law of the place where the fugitive or person accused shall be found, constitute one or more of the Λ offences hereinbefore enumerated, and are so established that such local law would justify his apprehension and commitment for trial if the crime had been there committed; or, in the case of a person alleged to have been convicted, on such evidence as, according to the law of the place where he is found, would prove that he had been convicted of one or more of those offences as defined by such local law.

United States Draft March, 1872

This copy was submitted to Hoine & Conkling.
J V B D

UNITED STATES.

DRAFT.

March 1872.

Draft of a Treaty of Extradition between Great Britain and the United States of America.

HER Majesty the Queen of the United Kingdom of Great Britain and Ireland, and the United States of America, having judged it expedient, with a view to the better administration of justice, and to the prevention of crime within their respective territories and jurisdictions, that persons charged with or convicted of the crimes hereinafter enumerated, and being fugitives from justice, should, under certain circumstances, be reciprocally delivered up; They have named as their Plenipotentiaries to conclude a Treaty for this purpose, that is to say:

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, the Right Honourable Sir Edward Thornton, a Member of Her Majesty's Privy Council, Knight Commander of the Most Honourable Order of the Bath, Her Envoy Extraordinary and Minister Plenipotentiary to the United States of America;

And the President of the United States of America, Hamilton Fish, Esquire, Secretary of State of the United States;

Who, after having communicated to each other their respective full powers, found in good and due form, have agreed upon and concluded the following Articles:—

ARTICLE I.

It is agreed that Her Britannic Majesty and the United States of America shall, on requisition made in their name by their respective Diplomatic Agents, deliver up to each other reciprocally, any persons who, being accused or convicted of Λ any of the crimes hereinafter specified, com-

H. Crimes on the high seas cant be in the jurisdiction.
(E) After the words "convicted of" (line 5) insert the words "and not punished for."

(T and E) After the word "Party" (line 7) insert in parenthesis "(they being actually within such jurisdiction when the crime was committed."

H. How could some of the crimes which follow be committed in such jurisdiction?

(F) 5. Embezzlement and Larceny to be limited to one thousand dollars for Great Britain and dependencies other than Canada and five hundred dollars for Canada.

(E) As to bankrupts—strike out.

(E) After "company" in line 21, insert "in the wilful conversion of money or other property".

(F) 8½ Rape.

H. Strike out "with violence" line 27.

(E) Lines 28 and 29 strike out.

(E) Insert before "sinking" in line 33 the word "criminal".

(E) Lines 36 and 37 strike out "or to do grievous bodily harm".

mitted within the jurisdiction of the requiring Party, ʌ shall be found within the territories of the other Party:—

1. Murder, or attempt or conspiracy to murder.
2. Manslaughter.
3. Counterfeiting or altering money, or uttering counterfeit or altered money.
4. Forgery, counterfeiting, or altering, or uttering what is forged or counterfeited or altered.
5. ~~Embezzlement or larceny.~~
6. ~~Obtaining money or goods by false pretenses.~~
7. Crimes by bankrupts against bankruptcy law.
8. Fraud by a bailee, banker, agent, factor, trustee, or director, or member or public officer of any company, ʌ and which fraud is made criminal by any law for the time being in force.
9. Abduction.
10. Child stealing.
11. Burglary or housebreaking.
12. Arson.
13. Robbery with violence.
14. Threats by letter or otherwise with intent to extort.
15. Piracy by law of nations committed on board of or against a vessel belonging to the nation asking extradition.
16. ʌ Sinking or destroying such a vessel at sea, or attempting or conspiring to do so.
17. Assaults on board such a ship on the high seas with intent to destroy life or to do grievous bodily harm.
18. Revolt or conspiracy to revolt by two or more persons on board such a ship on the high seas against the authority of the master.

Provided that the surrender shall be made only on evidence of such acts as by the law of the place where the fugitive or person accused shall be found, constitute one or more of the offences hereinbefore enumerated, and are so established that such local law would justify his apprehension and commitment for trial if the crime had been there committed; or, in the case of a person alleged to have been convicted, on such evidence as, according to the law of the place where he is found, would prove that he had been convicted of one or more of those offences as defined by such local law.

UNITED STATES.

DRAFT.

March 1872.

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HER Majesty the Queen of the United Kingdom of Great Britain and Ireland, and the United States of America, having judged it expedient, with a view to the better administration of justice, and to the prevention of crime within their respective territories and jurisdictions, that persons charged with or convicted of the crimes hereinafter enumerated, and being fugitives from justice, should, under certain circumstances, be reciprocally delivered up; They have named as their Plenipotentiaries to conclude a Treaty for this purpose, that is to say:

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, the Right Honourable Sir Edward Thornton, a Member of Her Majesty's Privy Council, Knight Commander of the Most Honourable Order of the Bath, Her Envoy Extraordinary and Minister Plenipotentiary to the United States of America;

And the President of the United States of America, Hamilton Fish, Esquire, Secretary of State of the United States;

Who, after having communicated to each other their respective full powers, found in good and due form, have agreed upon and concluded the following Articles:—

ARTICLE I.

It is agreed that Her Britannic Majesty and the United State of America shall, on requisition made in their name by their respective Diplomatic Agents, deliver up to each other reciprocally, any persons who, being accused or convicted of any of the crimes hereinafter specified, committed

within the **territorial** jurisdiction of the requiring Party, shall be found within the ~~territories~~ **jurisdiction** of the other Party ***when such crimes are subject to infamous punishment [by the requiring party]**:—

1. Murder, or attempt or conspiracy to murder.
2. Manslaughter.
3. Counterfeiting or altering money, or uttering counterfeit or altered money.
4. Forgery, counterfeiting, or altering, or uttering what is forged or counterfeited or altered.
5. Embezzlement or larceny.
6. Obtaining money or goods by false pretences.
7. Crimes by bankrupts against bankruptcy law.
8. Fraud by a bailee, banker, agent, factor, trustee, or director, or member or public officer of any company, and which fraud is made criminal by any law for the time being in force.
9. Abduction.
10. Child stealing.
11. Burglary or housebreaking.
12. Arson.
13. Robbery with violence.
14. Threats by letter or otherwise with intent to extort.
15. Piracy by law of nations committed on board of or against a vessel belonging to the nation asking extradition **for murder or attempt or manslaughter. (1. 2. above)**
16. Sinking or destroying such a vessel at sea, or attempting or conspiring to do so.
17. Assaults on board such a ship on the high seas with intent to destroy life or to do grievous bodily harm.
18. Revolt or conspiracy to revolt by two or more persons on board such a ship on the high seas against the authority of the master.

Provided that the surrender shall be made only on evidence of such **criminal** acts as by the law of the place where the fugitive or person accused shall be found, constitute one or more of the **crimes or** (offences) hereinbefore

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[***Otherwise petty larceny would be an extradition offence.**]

enumerated, and are so established that such local law would justify his apprehension and commitment for trial if the crime had been there committed; or, in the case of a person alleged to have been convicted, on such evidence as, according to the law of the place where he is found, would prove that he had been convicted of one or more of those offences, as defined by such local law.

Note from Thornton to Fish dated April 3, 1872

(Department of State Received Apr 4 1872)

Washington April 3 1872

The Honourable Hamilton Fish
&c. &c. &c.

Sir,

You will no doubt remember that previously to my leaving Washington last summer I had some conversation with you, relative to a proposal which had been made by Her Majesty's Government to enter into further stipulations with the Government of the United States relative to Extradition, and that we discussed a Draft of a Convention upon the subject, a copy of which I had forwarded to you in my note of the 17th of April 1871. My object was to obtain your views upon the Stipulations proposed by the Draft Convention in order that I might communicate them to Her Majesty's Government during my visit to England.

I accordingly addressed a despatch to Earl Granville in September last when I was in England, forwarding to him the substance of your observations upon the different articles of the Draft Convention and which I have the honour to inclose herewith transcribed in the margin of a copy of that Convention.

I have now been informed by Lord Granville under date of the 14th ultimo that Her Majesty's Government have given their careful attention to my despatch above mentioned, and have examined the alterations and additions proposed by you to the Draft Convention on Extradition with an anxious desire to meet the suggestions of the Government of the United States and to narrow the ground on which the British Government may not be able entirely to fall in with them.

Before proceeding to notice the various points in detail, it should be observed that the power of the Queen to conclude the proposed Treaty is derived solely from the

Act of 1870, 33 and 34 Vict: c. 52, and that consequently it is impossible for Her Majesty's Government to admit any stipulations inconsistent with that Act, or beyond its provisions, without making a fresh application to Parliament, a course which for various reasons they would be most unwilling to adopt. Having thus stated the general rule by which the British Government are necessarily bound, Lord Granville goes on to notice your different remarks and suggestions in their order.

Article I. Lord Granville is happy to perceive that you concur in opinion that considering the identity of language in the two countries, and the difficulties that would arise in deciding upon the claim to nationality in the case of fugitive criminals, it would be advisable not to make any Exception to Surrender in favour of natives of either Country.

The American Government propose to limit the Extradition crimes of Larceny and Embezzlement (No. 5 in the list) to cases where the amount abstracted is over £200, Suggesting however that the amount might be somewhat less in the case of Canada. The ground on which this proposal is based by you is the saving of Expense and the prevention of frivolous applications for the surrender of small offenders.

In practice, however, the precaution is not required. The Expense of sending an officer across the Atlantic and procuring the Extradition of a Criminal, is a sufficient safeguard against frivolous applications, and they would never be made.

But assuming that the proposed limitation were assented to, and that the definition of Larceny or Embezzlement were restricted in the manner desired by you, it is apprehended that, when a case might come before a magistrate in either country, such magistrate would be bound to require strict evidence that the amount abstracted by the individual prisoner before him Exceeded the Sum of £200.

Now it is well known to practitioners in Criminal Courts, that the amount which can *be proved* to have been abstracted by the prisoner is in Embezzlements by no means the measure of the extent or gravity of the offence which he has committed.—There may in Houses of Extensive business be a large balance found wanting; but the particular receipts and misappropriations by the prisoner admitting of proof, may be very small.—In cases where the actual amount of loss was unascertained, or even in cases where it was ascertained, if it did not appear on the face of the depositions to be over £200 (though it might

have been much larger), and unless the depositions also showed that the amount abstracted by the individual prisoner charged, exceeded that amount, it is apprehended that the Magistrate would have no option but to discharge him.

Again it is apprehended that prosecutors might have serious cause of complaint, if prompt action were obstructed by reason of this limitation;—suppose the case, for example, of the clerk of a Banker, Merchant or Solicitor, absconding.—The vessel in which he sailed to America or to Europe is known; he is suspected of having abstracted considerable amounts;—one case of stealing £150 the day before his flight can be proved. The prosecutor goes before a magistrate and proves that case, and asks for a warrant to send to New York or Liverpool at once. The magistrate would be obliged to say that it is of no use to ask for a warrant; that for that purpose a loss must be proved of over £200;—and the opportunity of prompt arrest might be lost.

The cases here supposed are by no means theoretical—Repeated instances of the kind have occurred in the Criminal Courts of Great Britain, and no doubt in those of the United States also, where the particular fraud proved has been even of trifling amount, but has been the index and exponent of a long continued system of theft. The case might even be one of stealing blank documents, in themselves of no value, such as blank Exchequer Bills, by means of which and of forgeries committed upon them by third parties, the Government or private persons might be largely defrauded.

For these reasons Her Majesty's Government are unwilling to adopt the limitation proposed by you in the offence of embezzlement or larceny. They fear that if it were imported into the Treaty, it might prove the source of much practical difficulty in both Countries, and introduce new and troublesome complications in the working of Extradition arrangements between them.

Her Majesty's Government are of opinion that the limitation suggested with regard to the crimes specified in Nos. 16, 17, 18 and 19 of the Catalogue of Extradition Offences, as well as the omission of the Crime of Rape, may be accepted.

Lord Granville regrets that it is not possible to assent to the proposal to add "kidnapping" to the list of offences in Article I, because that offence is not included in the list in the Act of 1870, to which the action of the Government is confined.

He is unable to concur with you in opinion that the last paragraph of Article I applies only to the laws of evidence of the country in which the criminal may be found, and that it does not require that the offence with which he is charged must be a crime by the laws of that country. According to the universal rule between nation and nation in regard to Extradition, the offence with which a criminal is charged must be one against the law of the country in which he is found, as well as against the law of the country asking for his Extradition. Lord Granville thinks this is the purport of the clause, but he does not object to the words proposed to be substituted, if they are more satisfactory to you.

He does not, however, understand the meaning of the word "omissions" in the passage introduced by you, and would suggest that it be omitted.

Article II. Lord Granville is unable to assent to the proposed omission of the words "of England," because they are found in the corresponding passage of the Act of Parliament. You attached no importance to the omission; and the words could not give rise to any inconvenience, as every case would be brought to London for investigation and decision.

In a subsequent part of the article, where it is provided that the Secretary of State shall allow a period of not less than fifteen days to intervene between the committal of the prisoner and the order for his surrender, you propose that this delay should be dispensed with in case the prisoner demands an earlier surrender. The object of the proviso is to allow the prisoner time to sue out a writ of Habeas Corpus according to the last paragraph of the article; and as the delay is expressly prescribed by the Act, it is not in the power of Her Majesty's Government to abridge it in any case.

Article III. The only observation which Lord Granville has to make upon this article, which describes the mode of proceeding in the United States in a case of demand by the British Government for Extradition, is in regard to a provision in the last paragraph, to the effect that when a fugitive is arrested, he shall be brought before the magistrate who issued the warrant, or, if the prisoner shall so require, before any other of the magistrates named in the article nearest to the place of his arrest or of his residence, *as the prisoner may elect.* I do not know whether this course is absolutely prescribed by the laws of the United States but it strikes Lord Granville that such a stipulation may afford to the prisoner an opportunity of

transferring his Examination to so distant a place as in reality to defeat the ends of justice.

Article IV. You inquired whether in Great Britain the arrest can be made on the mere request of the United States Minister, so as to provide for cases where advice of absconding arrives by telegraph before the depositions can arrive. In this respect the powers of Her Majesty's Government are limited by the words of the Act.—A Criminal can be arrested only

1. On a Warrant issued by a Police Magistrate on receipt of an order from the Secretary of State, and on such evidence as would justify the issue of the warrant if the crime had been committed in England. This case is provided for by Article II.

2. On a Warrant issued by a Police Magistrate or Justice of the Peace in any part of the United Kingdom on such evidence or after such proceedings as would justify the issue of the Warrant if the crime had been committed in that part of the United Kingdom in which he Exercised jurisdiction.

It would therefore be beyond the power of Her Majesty's Government to arrest any person summarily without a warrant having been issued against him in the manner directed by the 8th clause of the Act; and they are of opinion that under the terms of that clause, a warrant could not be issued until the fugitive "is in, or suspected of being in the United Kingdom."

These difficulties prevent Her Majesty's Government from accepting the amendments of the United States Government in Article IV. Some alterations have, however, been made in the wording of the last clause of the first paragraph, in order to adapt it better to the course of proceeding in both countries, and be within the limit of the act of Parliament.

Article V. The similarity of the law in the two countries renders the words "in the United Kingdom" superfluous.

Article VII becomes unnecessary, since no exception to surrender is to be made in favour of natives of either country.

N.B. The Nos. here to the end remain as in the original Draft, before Art. VII was struck out. But Article VIII is VII in the revised Draft and so on.

Article VIII. It is not in the power of Her Majesty's Government to omit the words objected to by you, because

it is Expressly provided in the Act of Parliament (Section 3 Cl. 1) that a fugitive criminal shall not be surrendered if he prove, not to the Secretary of State only, but also if he prove to the satisfaction of the Police Magistrate or the Court before whom he is brought on habeas corpus, that the requisition for his surrender has in fact been made with a view to try or punish him for an offence of a political character. Her Majesty's Government, however, hope that in practice this will not give rise to inconvenience.

Article IX. Her Majesty's Government accept the proposed amendment of the last clause, save that they would suggest the omission of the final words "so as to entitle it to be read in evidence," which might cause needless difficulty and dispute. They would also substitute the words "one of Her Majesty's Principal "Secretaries of State" for the words "Her Majesty's Principal Secretary of State for Foreign Affairs."

Article XI. There is no objection to specify that the demand must be a demand of the Diplomatic Agent. It must of course be a demand duly made in conformity with the Act.

Article XII. In reply to your enquiry whether, if a warrant had already been issued for the arrest of a criminal for a crime committed in the country in which he had taken refuge, but he was not yet in custody, he would be considered "under prosecution," so as to defer his surrender until after his trial and punishment, I would observe that he would be "under prosecution" as soon as any proceedings in accordance with the criminal law had been instituted against him, whether he were in custody or not.

With regard to the last paragraph of this article, Lord Granville awaits the result of the enquiries which you promised to make, in order to ascertain whether it would be possible for the United States, in accordance with their existing laws, to assent to it.

Articles XIII and XIV. Her Majesty's Government are ready to assent to the modifications desired by you.

Article XV. They likewise are willing to make a slight alteration in the second paragraph in order to remove the difficulty suggested as possible in case of there being no United States Consul at the Seat of Government in a British Colony; and they would propose that it should be stipulated that the requisition should be made by the Chief Consular Officer, being a Consul General or Consul, within the jurisdiction of the Governor.

The last clause of the third Paragraph, which empowers the Governor to refer the question of surrender to the Home Government is not considered by Her Majesty's Government to be essential, and may be omitted, if on further consideration you should continue to object to it.

As the Xth article of the Treaty of August 9 1842, which now governs the question of Extradition between the two countries, would be superseded by the new Treaty, a few words have been added to Article XVI, cancelling the article of the Treaty of 1842 from the time when the new Treaty shall come into operation, except as to any proceeding that may already have been taken or commenced in virtue thereof.

I have the honour to inclose three printed copies of the Draft Treaty amended in conformity with what is stated in this note.

I have the honour to be, with the highest consideration,

Sir,

Your obedient servant

EDW'D THORNTON.

Note on proposed changes in British draft of Treaty incorporated in United States draft March 1872 dated December 7, 1872

Bureau of Claims
December 7th, 1872

EXTRADITION TREATY

Notes

ART. I. No. 5. Embezelment & Larceny.

Lord Granville says as to the limitation £200 on $1000, referring to the reason given for the limitation by the Secretary of State of the U. S. viz. saving of expense and prevention of frivolous applications. 1st. "That in practice the precaution is not required that the expense itself would be a bar to applications in triffling cases, and

2nd. That in cases of embezlment the offence may cover large amounts while our small amount shown may be susceptable of proof—

I think the limitation ought to be adhered to and without the Canada exception. There are plenty of men in our country at least who would resort to that means (regardless of expense) of harrassing another, against whom he enter-

tains malice. The difficulty of proof is exaggerated by Ld G. The American modifications of No. 16-17-18 and 19, are adopted by Great Britain and incorporated in new draft marked "United States." The objection to adding "Kidnapping" is that it is not embraced in the Act [illegible]870, (British).

ART. II. "Unable to assent to the proposed omission of the words 'of England' because they are found in the corresponding passage of the act of parliament."

I think the terms of the last clause of Art. I and the words of Art. VIII, would render the retention of the above words harmless.

The terms of the act also prevent Lord Granville assenting to the Secretarys proposition to modify the 15 days delay between arrest and surrender at the option of the prisoner.

The reason given for its insertion is a good one and seems to have been conceived in the interest of the accused.

ART. III. Same objection is offered to the amendment of the Secretary, giving the accused the right to elect to be taken before a magistrate other than the one who issued the warrant, such other magistrate being nearest to the place of his arrest or place of his residence, but as it is inserted in the new draft it is presumed Lord Granville intends to agree to it.

This privilege is secured to persons arrested on accusation of crime in most if not all of the States. The reason for it is that the territorial extent of the State being large the accused person may not be taken so far from his home as to increase the difficulties of making a defence, that he may employ counsel of his choice and if he has witnesses be able to get them to the place of examination without unreasonable expense to him or unreasonable inconvenience to them. Criminal process no matter by whom issued runs all over the State. A magistrate may issue it in New York City and the man be arrested in Buffalo.

ART. IV. As to this Article Lord Granville considers that he is bound by the terms of the Act of Parliament. According to Section 8 of the Act this position is well taken by his Lordship—

With Article IV, left as it is now framed, in a case of minor importance it would not be worth while to assume the risks of arresting on telegraphic report. And in cases of supreme consequence as Murder—Bank embezzelment on a large scale &c. If the vessel upon which the culprit has

escaped is known the difficulty might generally be met by telegraphing to a reliable detective to keep on his track (shadow him) until the proper papers arrived.

ART. V. This Article is amended as desired by the Secretary of State, striking out the words "In the United Kingdom."

ART. VI. No difference of opinion as to this Article, same in both drafts.

ART. VII. Stricken out as suggested by Sec. of State.

ART. VIII, original being now VII. It seems to me that the suggestion of Mr. E. P. Smith to strike out all after the word character in the 5th line, is a good one. At all events the question of determining whether the offence is of a political character should not be left say to a commissioner or justice of the peace, (these are often U. S. commissioners). A judge of any of the courts of record could of course determine it correctly, but it would perhaps be best on all hands to leave the determination of that question, to the chief minister of each Government, who acts in the matter of surrender, that is the Secretary of State in the U. S. and in Gr. Br. the Secretary for foreign affairs or the home Department as they may determine.

IX, original now VIII. This Article is now changed according to the suggestions of the Secretary of State, and the last clause adapts it to the United States. The authentication by the oath of some witness &c seems to be superfluous as the certificate or attestation to that affidavit would in turn require authentication, unless it is intended that the oath proving the official character—signature &c be made before the examining magistrate and that would be a very unsafe and hazardous practice.

X, original now IX. No difference of opinion.

XI, original now X. No difference of opinion—no objection made to adding the words, made by a diplomatic agent.

XII, original now XI. Sir Ed'd Thornton says that he would be "under prosecution" when any proceedings under the criminal law are commenced. I think he is right. Substitute "and" for "or" in the second line, will improve. As it is now the fugitive might procure an accusation to be made against him by a confederate or friend.

The last clause as to obligations contracted towards private individuals ought to be omitted. In the United States the law regulates the remedies of private individuals in debt &c by attachment, and revised proceedings

where the party may be brought into court by constructive notice as by publication—and a civil action can proceed regardless of the personal presence of the defendant. This Article is retained in the new as it was in the old draft.

XIII, now XII. As to this Article and that following, now XIII, Sir Ed'd Thornton says "Her Majesty's Government are ready to assent to the modifications proposed by you." As to the first of these Art's. I think in addition to inserting after "arrest" in the second line the words "that may be material as evidence in making proof of the crime" that the sentence commencing with "such" in 5th line and ending with "crime" in 8th line ought to be stricken out.

XIV now XIII. Is right in the new draft the proposed amendments having been adopted.

XV, now XIV. The amendments proposed by the U. S. Secretary of State to this Article are adopted in the new draft.

XVI, now XV. There does not seem to be any objection to the words added to this Article with reference to cancellation of Article X of the Treaty of August 9th, 1842.

Nearly all the essential modifications proposed on the part of the United States have been acceded to and are incorporated in the new draft submitted entitled

UNITED STATES

DRAFT

March 1872

Respectfully submitted,

HENRY O'CONNOR.

Memo of Consultation F. with Mr. E. Thornton.

Jany 18/73

Strike out obtaining money false pretence

Limitation	Embezzlement	Larceny
	$1000	England
	500	~~G. B.~~ Canada

Insert Rape

ART. III. Instead of Territory "within the jurisdiction of the U. S."

ART. III. Add at the end last claim of Art. II omitting word "Police" & the concluding period.

"Line 22—substitute "or" for and.

ART. VII. Insert after the word magistrate "or of the ~~law officer or~~ ~~Commissioner~~ Justice, Judge, or Commissioner named in Article III of this ~~Treaty~~ Treaty"

ART. VIII. Substitute for *prison*

ART. XI, line 2, substitute "and" for "or" & in 3 line from bottom substitute "Complainant" for "injured party."

ART. XII, line 3, insert "as" before "evidence" and strike out all after the word "made" in sixth line and insert "The Magistrate, Justice, Judge or Com'r before whom the party shall be brought as provided in the preceding Article of this Treaty, shall determine what Articles shall be entered up in pursuance of this Article with the person of the individual claimed.

ART. XIX, line 9, omit "being a Consul General or Consul" 4 line from bottom instead of "United States" substitute "fugitive".

ART. XV from lines 3 & 4 omit "Due notice shall in each country be given of the day."

United States Draft of March 18, 1873

UNITED STATES.

DRAFT.

March 1872.

Draft of a Treaty of Extradition between Great Britain and the United States of America.

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And the President of the United States of America, Hamilton Fish, Esquire, Secretary of State of the United States;

Who, after having communicated to each other their respective full powers, found in good and due form, have agreed upon and concluded the following Articles:—

United States Draft March 18, 1873

Secretary's

ARTICLE I.

It is agreed that Her Britannic Majesty and the United States shall upon mutual requisition by them or their Ministers, Officers or Authorities, respectively made, deliver up to Justice all persons who being charged with or convicted of any of the crimes enumerated in the schedule annexed to this article, committed within the jurisdiction of either shall be found within the jurisdiction of the other, they being actually within such jurisdiction where the crime was committed. Provided that this shall only be done upon such evidence of criminality ~~of~~ as according to the laws of the place where the fugitive or persons so charged shall be found would justify his apprehension and Commitment for trial if the crime or offense had there been committed, and the respective judges and other magistrates of the two Governments shall have power, jurisdiction and authority upon complaint made under oath to issue a warrant for the apprehension of the fugitive or person so charged that he may be brought before such judges or other magistrates respectively to the end that the evidence of criminality may be heard and considered and, if on such hearing the evidence be deemed sufficient to sustain the charge it shall be the duty of the examining judge or magistrate to certify the same to the proper Executive authority that a warrant may issue for the surrender of such fugitive, the expense of such apprehension and delivery shall be born and defrayed by the party who makes the requisition and receives the fugitive.

Schedule

1. Murder or attempt or conspiracy to murder.

2. Manslaughter.

3. Counterfeiting or altering or uttering counterfeit or altered money.

4. Forgery, counterfeiting or altering or uttering what is forged or counterfeited or altered.

5. Embezzlement or larceny where the value is not under five hundred dollars or one hundred pounds when extradition is sought by or from Canada or one thousand dollars or two hundred pounds when it is sought by or from any other of Her Majesty's dominions except Canada.

6. Crimes by bankrupts.

7. Fraud by a bailer, banker, agent, factor, trustee or director or member or officer of any company and which fraud is made criminal by any law for the time being in force.

8. Perjury or subornation of perjury.

9. Rape.

10. Abduction.

11. Child stealing or Kidnapping.

12. Burglary or housebreaking.

13. Arson.

14. Robbery.

15. Threats by letter or otherwise with intent to extort.

16. Piracy by law of nations committed on board of or against a vessel belonging to the nation asking extradition.

17. Criminal sinking or destroying such a vessel at sea or attempting or conspiring to do so.

18. Assaults on board such ship on the high seas with intent to destroy life.

Conference Draft of United States Draft of March, 1873

UNITED STATES.

DRAFT.

March 1873.

Conference Draft June 9, 1873.

June 3, 1873.

This copy with the notes thereon was considered Sir Ed. Thornton & myself in a conference this day & the marginal & other alterations appended to—subject to corrections of verbal inaccuracies & to the approval of his Gov & of Pres.

Draft of a Treaty of Extradition between Great Britain and the United States of America.

HER Majesty the Queen of the United Kingdom of Great Britain and Ireland, and the United States of America, having judged it expedient, with a view to the better administration of justice, and to the prevention of crime within their respective territories and jurisdictions, that persons charged with or convicted of the crimes hereinafter enumerated, and being fugitives from justice, should, under certain circumstances, be reciprocally delivered up; They have named as their Plenipotentiaries to conclude a Treaty for this purpose, that is to say:

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, the Right Honourable Sir Edward Thornton, a Member of Her Majesty's Privy Council, Knight Commander of the Most Honourable Order of the Bath, Her Envoy Extraordinary and Minister Plenipotentiary to the United States of America;

And the President of the United States of America, Hamilton Fish, Esquire, Secretary of State of the United States;

Who, after having communicated to each other their respective full powers, found in good and due form, have agreed upon and concluded the following Articles:—

Instead of this article insert Art. X of treaty of /42 enumerating the crime as enumerated below.

ARTICLE I.

Line 8—for "territories" substitute jurisdiction

It is agreed that Her Britannic Majesty and the United States of America shall, on requisition made in their name by their respective Diplomatic Agents, deliver up to each other reciprocally, ~~any~~ persons who, being accused or convicted of any of the crimes hereinafter specified, committed within the jurisdiction of the requiring Party, ∧ **they being actually within such jurisdiction when the crime was committed** shall be found within the ~~territories~~ **jurisdiction** of the other Party:—

1. Murder, or attempt or conspiracy to murder.

2. Manslaughter.

3. Counterfeiting or altering money, or uttering counterfeit or altered money.

4. Forgery, counterfeiting, or altering or uttering what is forged or counterfeited or altered.

5. Embezzlement or larceny, where the value is not under five hundred dollars or one hundred pounds, when extradition is sought by or from Canada, or one thousand dollars or two hundred pounds when it is sought by or from any other of Her Majesty's dominions except Canada.

6. Crimes by bankrupts against bankruptcy law.

Strike out "public"

7. Fraud by a bailee, banker, agent, factor, trustee, or director, or member or ~~public~~ officer of any company, and which fraud is made criminal by any law for the time being in force.

8. Rape.

9. Abduction.

10. Child stealing.

11. Burglary or housebreaking.

12. Arson.

Omit "with violence"

13. Robbery ~~with violence~~.

14. Threats by letter or otherwise with intent to extort.

15. Piracy by law of nations committed on board of or against a vessel belonging to the nation asking extradition.

16. A **Criminal** Sinking or destroying such a vessel at sea, or attempting or conspiring to do so.

Omit "or to do grievous bodily harm"

17. Assaults on board such a ship on the high seas with intent to destroy life ~~or to do grievous bodily harm~~.

18. Revolt or conspiracy to revolt by two or more persons on board such a ship on the high seas against the authority of the master.

Provided that the surrender shall be made only on evidence of such acts as by the law of the place where the fugitive or person accused shall be found, constitute one or more of the ~~offences~~ **crimes** hereinbefore enumerated, and are so established that such local law would justify his apprehension and commitment for trial if the crime had been there committed; or, in the case of a person alleged to have been convicted, on such evidence as, according to the law of the place where he is found, would prove that he had been convicted of one or more of those ~~offences~~ **crimes** as defined by such local law.

UNITED STATES.

DRAFT.

March 1873.

Draft of a Treaty of Extradition between Great Britain and the United States of America.

HER Majesty the Queen of the United Kingdom of Great Britain and Ireland, and the United States of America, having judged it expedient, with a view to the better administration of justice, and to the prevention of crime within their respective territories and jurisdictions, that persons charged with or convicted of the crimes hereinafter enumerated, and being fugitives from justice, should, under certain circumstances, be reciprocally delivered up; They have named as their Plenipotentiaries to conclude a Treaty for this purpose, that is to say:

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, the Right Honourable Sir Edward Thornton, a Member of Her Majesty's Privy Council, Knight Commander of the Most Honourable Order of the

Bath, Her Envoy Extraordinary and Minister Plenipotentiary to the United States of America;

And the President of the United States of America, Hamilton Fish, Esquire, Secretary of State of the United States;

Who, after having communicated to each other their respective full powers, found in good and due form, have agreed upon and concluded the following Articles:—

ARTICLE I.

It is agreed that Her Britannic Majesty and the United States of America shall, on requisition made in their name by their respective Diplomatic Agents, deliver up to each other reciprocally, any persons who, being accused or convicted of any of the crimes hereinafter specified, committed within the jurisdiction of the requiring Party, shall be found within the territories of the other Party:—

1. Murder, or attempt or conspiracy to murder.

2. Manslaughter.

3. Counterfeiting or altering money, or uttering counterfeit or altered money.

4. Forgery, counterfeiting, or altering, or uttering what is forged or counterfeited or altered.

5. Embezzlement or larceny, where the value is not under five hundred dollars or one hundred pounds, when extradition is sought by or from Canada, or one thousand dollars or two hundred pounds when it is sought by or from any other of Her Majesty's dominions except Canada.

6. Crimes by bankrupts against bankruptcy law.

7. Fraud by a bailee, banker, agent, factor, trustee, or director, or member or public officer of any company, and which fraud is made criminal by any law for the time being in force.

8. Rape.

9. Abduction.

10. Child stealing.

11. Burglary or housebreaking.

12. Arson.

13. Robbery with violence.

14. Threats by letter or otherwise with intent to extort.

15. Piracy by law of nations committed on board of or against a vessel belonging to the nation asking extradition.

16. Sinking or destroying such a vessel at sea, or attempting or conspiring to do so.

17. Assaults on board such a ship on the high seas with intent to destroy life or to do grievous bodily harm.

18. Revolt or conspiracy to revolt by two or more persons on board such a ship on the high seas against the authority of the master.

Provided that the surrender shall be made only on evidence of such acts as by the law of the place where the fugitive or person accused shall be found, constitute one or more of the offences hereinbefore enumerated, and are so established that such local law would justify his apprehension and commitment for trial if the crime had been there committed; or, in the case of a person alleged to have been convicted, on such evidence as, according to the law of the place where he is found, would prove that he had been convicted of one or more of those offences as defined by such local law.

ARTICLE II.

In the dominions of Her Britannic Majesty, other than the Foreign or Colonial Possessions of Her Majesty, the manner of proceeding shall be as follows:—

I. In the case of a person accused—

The requisition for the surrender shall be made to Her Britannic Majesty's Principal Secretary of State for Foreign Affairs by the Minister or other Diplomatic Agent of the United States, accompanied by a warrant or other equivalent judicial document for the arrest of the accused, issued by a Judge or Magistrate duly authorized to take cognizance of the acts charged against him in the United States, together with duly authenticated depositions or statements taken on oath before such Judge or Magistrate, clearly setting forth the said acts, and a description of the person claimed, and any particulars which may serve to identify him. The said Secretary of State shall transmit such documents to Her Britannic Majesty's Principal Secretary of State for the Home Department, who shall then, by order under his hand and seal, signify to some Police Magistrate in London that such requisition has been made, and require him, if there be due cause, to issue his warrant for the apprehension of the fugitive.

On the receipt of such order from the Secretary of State, and on the production of such evidence as would, in the opinion of the Magistrate, justify the issue of the war-

rant if the crime had been committed in the United Kingdom, he shall issue his warrant accordingly.

When the fugitive shall have been apprehended in virtue of such warrant, he shall be brought before the Police Magistrate who issued it, or some other Police Magistrate in London. If the evidence to be then produced shall be such as to justify, according to the law of England, the committal for trial of the prisoner if the crime of which he is accused had been committed in England, the Police Magistrate shall commit him to prison to await the warrant of the Secretary of State for his surrender; sending immediately to the Secretary of State a certificate of the committal and a report upon the case.

After the expiration of a period from the committal of the prisoner, which shall never be less than fifteen days, the Secretary of State shall, by order under his hand and seal, order the fugitive criminal to be surrendered to such person as may be duly authorized to receive him on the part of the Government of the United States.

II. In the case of a person convicted—

The course of proceeding shall be the same as in the case of a person accused, except that the warrant to be transmitted by the Minister or other Diplomatic Agent in support of his requisition shall clearly set forth the crime of which the person claimed has been convicted, and state the fact, place, and date of his conviction. The evidence to be produced before the Police Magistrate shall be such as would, according to the law of England, prove that the prisoner was convicted of the crime charged.

After the Police Magistrate shall have committed the accused or convicted person to prison to await the order of a Secretary of State for his surrender, such person shall have the right to apply for a writ of *habeas corpus*. If he should so apply, his surrender must be deferred until after the decision of the Court upon the return to the writ, and even then can only take place if the decision is adverse to the applicant. In the latter case the Court may at once order his delivery to the person authorized to receive him, without the order of a Secretary of State for his surrender, or commit him to prison to await such order.

ARTICLE III.

Within the jurisdiction of the United States the manner of proceeding shall be as follows:—

I. In the case of a person accused—

The requisition for the surrender shall be made to the Secretary of State of the United States by the Minister or other Diplomatic Agent of Her Britannic Majesty, accompanied by a Warrant for the arrest of the accused, issued by a Judge or Magistrate duly authorized to take cognizance of the acts charged against him in Great Britain, together with duly authenticated depositions or statements taken on oath before such Judge or Magistrate, clearly setting forth the said acts, and a description of the person claimed, and any other particulars which may serve to identify him.

The Secretary of State, by certificate under his hand and the Seal of his Department, to be addressed to any Justice of the Supreme Court of the United States, any Circuit Judge or Judge of the District Court of the United States in any District, any Judge of the Supreme or Superior Court of any State or Territory, or to any Commissioner specially appointed to execute the Acts of Congress for giving effect to Treaties for the extradition of criminals, shall signify the making of a requisition by the Diplomatic Agent of Her Britannic Majesty, to the end that the above-named officers, or any of them, may cause the necessary proceedings to be had that the evidence of the criminality of the accused may be heard, considered, and certified to the Secretary of State, so that, if deemed sufficient to sustain the charge, a warrant may issue for his surrender to the person who may be duly authorized to receive him on the part of the Government of Her Britannic Majesty.

When the fugitive shall have been apprehended in virtue of such warrant, he shall be brought before the Magistrate who issued it, or, if the prisoner shall so require, before any other of the Magistrates in this Article named, nearest to the place of his arrest or of his residence, as the prisoner may elect. If the evidence to be then produced shall be such as is required by the present Article, the Magistrate shall commit him to prison to await the warrant of the Secretary of State for his surrender, sending immediately to the Secretary of State a Certificate of the committal and a Report upon the case. Upon the receipt of such Certificate and Report the Secretary of State shall, with all practicable despatch, issue his warrant for the surrender of the accused to such person as may be duly authorized to receive him on the part of Her Britannic

Majesty's Government, but may suspend the issue of such warrant until the termination of proceedings upon a writ of *Habeas Corpus,* if application therefor be made by the prisoner.

II. In the case of a person convicted—

The course of proceeding shall be the same as in the case of a person accused, except that the Warrant to be transmitted by the Minister or other Diplomatic Agent in support of his requisition, shall clearly set forth the crime of which the person claimed was convicted, and state the fact, place, and date of his conviction.

After the Magistrate shall have committed the accused or convicted person to prison to await the order of the Secretary of State for his surrender, such person shall have the right to apply for a writ of *habeas corpus.* If he should so apply, his surrender must be deferred until after the decision of the Court upon the return to the writ, and even then can only take place if the decision is adverse to the applicant.

ARTICLE IV.

A fugitive criminal may, however, be apprehended under a warrant issued by any Police Magistrate, Justice of the Peace, or other competent authority in either country, on such information or complaint, and such evidence, or after such proceedings as would, in the opinion of the person issuing the warrant, justify the issue of a warrant, if the crime had been committed or the prisoner convicted, in that part of the dominions of the two Contracting Parties in which he exercises jurisdiction. Any person issuing a warrant under this Article when no requisition for the surrender of the accused has been made by the Diplomatic Agent of the country from which he is a fugitive, shall forthwith make a Report of such issue to the Secretary of State, and shall at the same time send to him the evidence and information or complaint, or certified copies thereof. If within such reasonable time as, with reference to the circumstances of the case, the Secretary of State or the Police Magistrate, as the case may be, may fix, a requisition be not made for the surrender of the accused in accordance with the preceding Articles, the prisoner shall be forthwith discharged. In the meantime he shall be detained in such manner as the law of the place where he was arrested may provide.

The same rule shall apply to the cases of persons accused or convicted of any of the crimes specified in this Treaty, committed on the high seas, on board any vessel of either country, which may come into any port of the other.

ARTICLE V.

If the fugitive criminal who has been committed to prison be not surrendered and conveyed away within two months after such committal (or within two months after the decision of the Court, upon the return to a writ of *habeas corpus*) he shall be discharged from custody, unless sufficient cause be shown to the contrary.

ARTICLE VI.

When any person shall have been surrendered by either of the High Contracting Parties to the other, such person shall not, until he has been restored or had an opportunity of returning to the country from whence he was surrendered, be triable or tried for any offence committed in the other country prior to the surrender, other than the particular offence on account of which he was surrendered.

ARTICLE VII.

No accused or convicted person shall be surrendered, if the offence in respect of which his surrender is demanded shall be deemed by the party upon whom it is made to be one of a political character, or if he prove to the satisfaction of the Police Magistrate, or of the Justice, Judge, or Commissioner named in Article III of this Treaty, or of the Court before which he is brought on *habeas corpus*, or to the Secretary of State, that the requisition for his surrender has, in fact, been made with a view to try or to punish him for an offence of a political character.

ARTICLE VIII.

Warrants, depositions, or statements on oath, issued or taken in the dominions of either of the two High Contracting Parties, and copies thereof, and certificates of or judicial documents stating the fact of conviction, shall be received in evidence in proceedings in the dominions of the other, if purporting to be signed or certified by a Judge, Magistrate, or officer of the country where they were issued or taken.

Provided such warrants, depositions, statements, copies, certificates, and judicial documents are duly authenticated according to the law of the place where such au-

thentication was made, and are accompanied by the certificate, under his official seal, of one of Her Majesty's Principal Secretaries of State, or of the Secretary of State of the United States, or in the case of a Colonial document, of the Governor or Minister of Justice or some Minister of State of the Colony, to the genuineness of the signature and the official character of the person purporting to have signed or certified the document.

ARTICLE IX.

The surrender shall not take place if, since the commission of the acts charged, the accusation, or the conviction, exemption from prosecution or punishment has been acquired by lapse of time, according to the laws of the country where the accused shall have taken refuge.

ARTICLE X.

If the individual claimed by one of the two Contracting Parties, in pursuance of the present Treaty, should be also claimed by one or several other Powers, on account of other crimes committed upon their territory, his surrender shall, in preference, be granted in compliance with that demand of the Diplomatic Agent which is earliest in date; unless any other arrangement should be made between the Governments which have claimed him, either on account of the gravity of the crimes committed, or for any other reasons.

ARTICLE XI.

If the individual claimed should be under prosecution, out on bail, or in custody, for a crime or offence committed in the country where he may have taken refuge, or if a warrant for his arrest upon a criminal charge has been obtained in good faith, and with intent to proceed thereupon without delay, his surrender may be deferred until he shall have been set at liberty in due course of law.

In case he should be proceeded against or detained in such country, on account of obligations contracted towards private individuals, his surrender shall nevertheless take place, the complainant retaining his right to prosecute his claims before the competent authority.

ARTICLE XII.

Every article found in the possession of the individual claimed at the time of his arrest, that may be material as evidence in making proof of the crime, shall be seized, in order to be delivered up with his person at the time when

the surrender shall be made. The Magistrate, Justice, Judge, or Commissioner before whom the party shall be brought, as provided in the preceding Article of this Treaty, shall determine what articles shall be delivered up, in pursuance of this Article, with the person of the individual claimed.

ARTICLE XIII.

The High Contracting Parties renounce any claim for the reimbursement of the expenses incurred by them in the arrest and maintenance of the person to be surrendered, and his conveyance till placed on board ship; they reciprocally agree to bear such expenses themselves.

ARTICLE XIV.

The stipulations of the present Treaty shall be applicable to the Foreign or Colonial possessions of the two High Contracting Parties.

The requisition for the surrender of a fugitive criminal who has taken refuge in a Foreign or Colonial possession of either Party, shall be made to the Governor or Chief Authority of such possession by the Chief Consular Officer of the other, within the jurisdiction of such Governor or Chief Authority; or, if the fugitive has escaped from a Foreign or Colonial possession of the Party on whose behalf the requisition is made, by the Governor or Chief Authority of such possession.

Such requisitions may be disposed of, subject always, as nearly as may be, to the provisions of this Treaty, by the respective Governors or Chief Authorities.

Her Britannic Majesty shall, however, be at liberty to make special arrangements in the British Colonies and Foreign possessions for the surrender of fugitive criminals who may take refuge within such Colony, on the basis, as nearly as may be, of the provisions of the present Treaty.

ARTICLE XV.

The present Treaty shall come into operation months after the exchange of the Ratifications. After the Treaty shall so have been brought into operation, Article X of the Treaty concluded between the High Contracting Parties on the 9th of August, 1842, shall be considered as cancelled, except as to any proceeding that may have already been taken or commenced in virtue thereof.

Either Party may at any time terminate this Treaty on giving to the other six months' notice of its intention.

ARTICLE XVI.

The present Treaty shall be ratified, and the Ratifications shall be exchanged at as soon as may be within from the date of signature.

In witness whereof, the respective Plenipotentiaries have signed the same, and have affixed thereto the seals of their arms.

Done at , the day of , in the year of Our Lord one thousand eight hundred and seventy-

Note from Thornton to Fish dated April 10, 1873

Washington
April 10 1873.

The Hon:
Hamilton Fish.

Sir,

I forwarded to Lord Granville on the 20th of January last the Draft of the proposed Extradition Treaty between Great Britain and the United States, with the alterations which were suggested by you noted in the margin.

I have now the honour to transmit herewith two Copies of the Draft which has been re-printed with such of your alterations as Her Majesty's Government is of opinion should be inserted in the Treaty, together with some slight modifications desired by Her Majesty's Government.

These alterations and modifications are as follows:

Article I. Crime 5. After the words "Embezzlement or Larceny" Her Majesty's Government has slightly altered the wording of the Paragraph proposed by the United States, which will now run thus: "Where the value is not under $500 or £100 when extradition is sought by or from Canada, or $1000 or £200 when it is sought by or from any other of Her Majesty's Dominions except Canada."

Article I. Crime 6. "Obtaining money or goods by false pretenses" has been omitted from the list of crimes in accordance with the wish of the Government of the United States. It is however with much regret that this has been done, as from experience this is a crime *very frequently* committed on a large scale by persons who lose no time in becoming "fugitives from justice," and Lord Granville has instructed me to invite your attention to this point, in the hope that you may be induced to allow that crime to be reinserted.

The crime of "Rape" has been reinserted in its former place. Article III. Her Majesty's Government does not object to the substitution of the words "within the jurisdiction" for "In the territories," and in line 22 the word "or" has been substituted for "and," neither does Her Majesty's Government object to the Paragraph added to the end of Article III by the United States Government, which is in accordance with the Extradition Act of 1870.

The Paragraph has therefore been printed in the amended Draft.

Article VII. Her Majesty's Government has no objection to the addition of the words "or of the Justice, Judge or Commissioner named in Article III of this Treaty" after the words "Police Magistrate."

Article VIII. A slight addition has been made by Her Majesty's Government to the new Paragraph of this Article proposed by you, so as now to include Colonial Documents.

Article XI. Her Majesty's Government does not concur in your opinion that when a man is on bail, he is considered to be in custody; a few words have therefore been added at the commencement of the Article which now runs thus:

> "If the Individual claimed be under prosecution, out on bail, or in custody or"—

In line 12 of this Article there is no objection to the word "Complainant" being substituted for the words "Injured party."

Article XII. Her Majesty's Government has no objection to the alterations suggested by you.

Article XIII. Notwithstanding the objections which you have made, Her Majesty's Government would prefer, if you could be induced to acquiesce, the substitution of Article XIV of the Extradition Treaty with Germany which provides that "the high Contracting Parties renounce any claim for the reimbursement" of the expenses incurred by them in "the arrest and maintenance of the person to be surrendered and his conveyance till placed on board ship; they reciprocally agree to bear such expenses themselves," for Article XIII of the Draft Treaty with the United States, which, as it now stands, provides that "Each of the two Contracting parties shall defray the expenses occasioned by the arrest, detention and conveyance to its own territory of the persons whose surrender it may obtain in pursuance of the present Treaty," and that Article has therefore been inserted in the present amended Draft.

Recent experience of the heavy expenses incurred in connection with certain extradition cases has induced Her Majesty's Government to propose this alteration, which it trusts that you will not object to. Indeed it seems more probable that in this way the expenses would be kept within reasonable limits. Article XIV. There is no objection to the alterations proposed by the Government of the United States.

Article XV. There is no objection to the omission of the words in lines 3 and 4.

In transmitting the enclosed amended Draft to you, I am at the same time instructed to express the hope of Her Majesty's Government that the United States Government will see no objection to the alterations proposed by Her Majesty's Government.

I have the honour to be, with the highest consideration, Sir,

Your obedient Servant,

EDW'D THORNTON.

United States Draft October 1873

UNITED STATES.

DRAFT.

October 1873.

Draft of a Treaty of Extradition between Great Britain and the United States of America.

HER Majesty the Queen of the United Kingdom of Great Britain and Ireland, and the United States of America, having judged it expedient, with a view to the better administration of justice, and to the prevention of crime within their respective territories and jurisdictions, that persons charged with or convicted of the crimes hereinafter enumerated, and being fugitives from justice, should, under certain circumstances, be reciprocally delivered up; They have named as their Plenipotentiaries to conclude a Treaty for this purpose, that is to say:

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, the Right Honourable Sir Edward Thornton, a Member of Her Majesty's Privy Council,

Knight Commander of the Most Honourable Order of the Bath, Her Envoy Extraordinary and Minister Plenipotentiary to the United States of America;

And the President of the United States of America, Hamilton Fish, Esquire, Secretary of State of the United States;

Who, after having communicated to each other their respective full powers, found in good and due form, have agreed upon and concluded the following Articles:—

As framed in Conference draft

Art I

1st Paragraph. "It is agreed that Her Britannic Majesty and the United States *of America* shall on requisition made in their name, by their representative Diplomatic Agents, deliver up to each other reciprocally persons who being accused or convicted of any of the crimes hereinafter specified, committed within the jurisdiction of the requiring party, *they being actually within such jurisdiction when the crime was committed* shall be found within the jurisdiction of the other party."

1. Murder, or attempt or conspiracy to murder.

2. Manslaughter.

3. Counterfeiting or altering money, or uttering counterfeit or altered money.

4. Forgery, counterfeiting, or altering or uttering what is forged or counterfeited or altered.

5. Embezzlement or larceny. **When the value is not under $500 or 100£ when extradition is sought by or from Canada or $1000 or 200£ when it sought by or from any other of her majesty's dominions except Canada**

6. ~~7.~~ Crimes by bankrupts against bankruptcy law.

7. ~~8.~~ Fraud by a bailee, banker, agent, factor, trustee, or director, or member or ~~public~~ officer of any company, and which fraud is made criminal by any law for the time being in force.

8. Rape

9. Abduction.

10. Child stealing.

11. Burglary or housebreaking.

12. Arson.

13. Robbery ~~with violence.~~

14. Threats by letter or otherwise with intent to extort.

15. Piracy by law of nations committed on board of or against a vessel belonging to the nation asking extradition.

16. **criminally** Sinking or destroying such a vessel at sea, or attempting or conspiring to do so.

17. Assaults on board such a ship on the high seas with intent to destroy life ~~or to do grievous bodily harm.~~

18. Revolt or conspiracy to revolt by two or more persons on board such a ship on the high seas against the authority of the master.

"Provided that the surrender shall be made only on evidence of such acts as by the law of the place where the fugitive or person accused shall be found constitute one or more of the crimes hereinbefore enumerated and are so established that such local law would justify his apprehension and committment for trial if the crime had been there committed; or, in the case of a person alleged to have been convicted on such evidence as according to the law of the place where he is found would prove that he had been convicted of one or more of those crimes as defined by such local law."

"Convicted" and "whether as a principal or as an accessory either before or after the fact" are new in the preamble.

5*a*. Malicious injury to property if the offense "be indictable".

7*a*. Perjury or subornation of perjury.

10*a* False imprisonment are merely added crimes. The phraseology is too much changed in the new article to be intelligibly designated by mark, the clause "committed within the jurisdiction of either shall seek an asylum or be formed within the jurisdiction of the other" is transferred from the 1st to the last paragraph.

ARTICLE I.

It is agreed that Her Britannic Majesty and the United States shall, upon mutual requisitions by them, *or their Ministers, Officers, or Authorities* respectively, made, deliver up to justice all persons who being charged with, or *convicted* of, any of the crimes following, *whether as a principal or as an accessory either before or after the fact*—

agree
disagree

1. Murder, or attempt or conspiracy to murder.

2. Manslaughter.

3. Counterfeiting or altering money, or uttering counterfeit or altered money.

4. Forgery, counterfeiting, or altering, or uttering what is forged or counterfeited or altered.

5. Embezzlement or larceny, where the value is not under five hundred dollars or one hundred pounds, when extradition is sought by or from Canada, or one thousand dollars or two hundred pounds when it is sought by or from any other of Her Majesty's dominions except Canada.

disagree *5a. Malicious injury to property, if the offense be indictable.*

by bankruptcy 6. Crimes against bankruptcy law.

7. Fraud by a bailee, banker, agent, factor, trustee, or director, or member or officer of any company, and which fraud is made criminal by any law for the time being in force.

agree *7a. Perjury or subornation of perjury.*

8. Rape.

9. Abduction.

agree 10. Child stealing *or kidnapping.*

disagree *10a. False imprisonment.*

11. Burglary or housebreaking.

12. Arson.

13. Robbery.

14. Threats by letter or otherwise with intent to extort.

15. Piracy by law of nations committed on board of or against a vessel belonging to the nation asking extradition.

16. Criminal sinking or destroying such a vessel at sea, or attempting or conspiring to do so.

17. Assaults on board such a ship on the high seas with intent to destroy life.

18. Revolt or conspiracy to revolt by two or more persons on board such a ship on the high seas against the authority of the master:

Committed within the jurisdiction of either, shall seek an asylum or shall be found within the *jurisdiction* of the other **they being actually within such jurisdiction when the**

crime was committed: provided that this shall only be done upon such evidence of criminality as according to the laws of the place where the fugitive or person so charged shall be found, would justify his apprehension and commitment for trial, if the *crime* or offence had there been committed, *and the respective Judges and other Magistrates of the two Governments shall have power, jurisdiction, and authority, upon complaint made under oath, to issue a warrant for the apprehension of the fugitive or persons so charged that he may be brought before such Judges or other Magistrates respectively, to the end that the evidence of criminality may be heard and considered, and if, on such hearing the evidence be deemed sufficient to sustain the charge, it shall be the duty of the Examining Judge or Magistrate to certify the same to the proper Executive Authority, that a warrant may issue for the surrender of such fugitive.* The expense of such apprehension and delivery shall be borne and defrayed by the party who makes the requisition and receives the fugitive.

United States Draft October 1873

UNITED STATES.

DRAFT.

October 1873.

Draft of a Treaty of Extradition between Great Britain and the United States of America.

HER Majesty the Queen of the United Kingdom of Great Britain and Ireland, and the United States of America, having judged it expedient, with a view to the better administration of justice, and to the prevention of crime within their respective territories and jurisdictions, that persons charged with or convicted of the crimes hereinafter enumerated, and being fugitives from justice, should, under certain circumstances, be reciprocally delivered up; They have named as their Plenipotentiaries to conclude a Treaty for this purpose, that is to say:

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, the Right Honourable Sir Edward Thornton, a Member of Her Majesty's Privy Council,

Knight Commander of the Most Honourable Order of the Bath, Her Envoy Extraordinary and Minister Plenipotentiary to the United States of America;

And the President of the United States of America, Hamilton Fish, Esquire, Secretary of State of the United States;

Who, after having communicated to each other their respective full powers, found in good and due form, have agreed upon and concluded the following Articles:—

ARTICLE I.

It is agreed that Her Britannic Majesty and the United States shall, upon mutual requisitions by them, or their Ministers, Officers, or Authorities respectively, made, deliver up to justice all persons who being charged with, or convicted of, any of the crimes following, whether as a principal or as an accessory either before or after the fact—

1. Murder, or attempt or conspiracy to murder.

2. Manslaughter.

3. Counterfeiting or altering money, or uttering counterfeit or altered money.

4. Forgery, counterfeiting, or altering, or uttering what is forged or counterfeited or altered.

5. Embezzlement or larceny, where the value is not under five hundred dollars or one hundred pounds, when extradition is sought by or from Canada, or one thousand dollars or two hundred pounds when it is sought by or from any other of Her Majesty's dominions except Canada.

5*a*. Malicious injury to property, if the offence be indictable.

6. Crimes against bankruptcy law.

7. Fraud by a bailee, banker, agent, factor, trustee, or director, or member or officer of any company, and which fraud is made criminal by any law for the time being in force.

7*a*. Perjury or subornation of perjury.

8. Rape.

9. Abduction.

10. Child stealing or kidnapping.

10*a*. False imprisonment.

11. Burglary or housebreaking.

12. Arson.

13. Robbery.

14. Threats by letter or otherwise with intent to extort.

15. Piracy by law of nations committed on board of or against a vessel belonging to the nation asking extradition.

16. Criminal sinking or destroying such a vessel at sea, or attempting or conspiring to do so.

17. Assaults on board such a ship on the high seas with intent to destroy life.

18. Revolt or conspiracy to revolt by two or more persons on board such a ship on the high seas against the authority of the master:

Committed within the jurisdiction of either, shall seek an asylum or shall be found within the jurisdiction of the other: provided that this shall only be done upon such evidence of criminality as according to the laws of the place where the fugitive or person so charged shall be found, would justify his apprehension and commitment for trial, if the crime or offence had there been committed, and the respective Judges and other Magistrates of the two Governments shall have power, jurisdiction, and authority, upon complaint made under oath, to issue a warrant for the apprehension of the fugitive or persons so charged that he may be brought before such Judges or other Magistrates respectively, to the end that the evidence of criminality may be heard and considered, and if, on such hearing the evidence be deemed sufficient to sustain the charge, it shall be the duty of the Examining Judge or Magistrate to certify the same to the proper Executive Authority, that a warrant may issue for the surrender of such fugitive. The expense of such apprehension and delivery shall be borne and defrayed by the party who makes the requisition and receives the fugitive.

Note from Thornton to Fish, dated October 25, 1873

(Received Oct 25 1873 Department of State)

Honourable Hamilton Fish, &c., &c.

Washington, October 25, 1873.

Sir,

I have the honour to inform you that Her Majesty's Government has had under it's careful consideration the Counter Draft of the proposed Extradition Treaty between the United States and Great Britain which was the result of our several conferences and which I transmitted to Earl

Granville on the 12th of June last. His Lordship has now instructed me to state to the Government of the United States that with some slight modifications Her Majesty's Government is prepared to accept that Draft.

The modifications proposed by Her Majesty's Government have been inserted in the printed draft Treaty herewith enclosed, and are as follows:

Article I. In the last line but two of the first Paragraph, the words "or convicted" have been inserted after the words "charged with," and some words have been added at the end of the same paragraph to include accessories either before or after the fact, as well as Principals.

In Crime 4, it is the wish of the Canadian Government that the two hundred Pound limit should apply to that dominion. Her Majesty's Government therefore trusts that the United States Government will consent to fix the value at two Hundred Pound in all cases of the demand for extradition of persons charged with embezzlement or larceny.

The Canadian Government is also desirous that the crime of embezzlement should be legally defined, as the term is said to have a different signification in different States of the Union.

After Crime No. 5, Her Majesty's Government in virtue of the power granted to it under the Act passed last Session to amend the Extradition Act of 1870, a copy of which is herewith enclosed, is desirous of adding the following crime which will be called "5a. Malicious injury to property, *if the offence be indictable*"; the words underlined being added to exclude petty cases which are only punishable by a Summary Conviction, and after Crime No. 7 the following crime which will be called Crime "7a Perjury or Subornation of Perjury." Crime 7. Her Majesty's Government prefers the words "Crimes against bankruptcy law" to "Crimes by *Bankrupts* against bankruptcy law." In all future Treaties which Great Britain may conclude, it has been decided, on account of some recent proceedings, to omit the words "by bankrupts" in this Crime, so that accessories may be included.

Crime 10. In deference to a wish formerly expressed by you the words "or kidnapping" have been added, and after Crime 10 the following crime which will be called Crime "10a. False Imprisonment"—has been added in virtue of the power granted to Her Majesty's Government under the above mentioned amending Extradition Act.

I am also instructed to state that Her Majesty's Government would have preferred the retention of the words "or to do grievous bodily harm" in Crime No. 17.

The other amendments proposed by you in Article I may, in the opinion of Her Majesty's Government be accepted including, if the United States Government should insist upon it, the final provision as to expenses.

Articles II, III, and IV of the original English Draft may be omitted.

Article V of the original English Draft (Article II of the new Draft) remains unaltered.

Article VI of the original Draft (Article III, of the new Draft) may be altered as proposed by you.

Article VII (Article IV of the new Draft). Her Majesty's Government regrets that it is not in it's power to agree to the proposed omission of the words between brackets in the original Article. The English Act of 1870 on the point in question is imperative, and the proposed omission would be an infringement of it. Her Majesty's Government has however amended the Article with the object of meeting your views as far as possible.

Article VIII of the original Draft may be omitted.

Articles IX, X, XI and XII (or V, VI, VII and VIII of the new Draft) may be amended as proposed by the Government of the United States.

Article XIII. Her Majesty's Government would greatly prefer retaining Article XIII of the original Draft (a printed copy of which is herewith enclosed) in preference to the arrangement proposed by you. In all the Treaties made since the Extradition Act of 1870 was passed, this Article has been inserted and agreed to; Germany, Belgium, Italy and Denmark, being strongly of opinion that it is the best mode of proceeding for expenses and practical experience has enabled the British Authorities to confirm that view. I am therefore instructed earnestly to urge you to adopt the arrangement agreed to by all other countries with which England has Extradition Treaties,—an arrangement which has the great advantage that the Government of each Country can exercise Control over it's own Police Officers, and check unnecessary expenses, whereas under the mode proposed by you there can be no such control.

Article XIV (or Article IX of the new Draft). Her Majesty's Government thinks the proposed words "under

instructions from his Government" ambiguous, and it therefore proposes to substitute for them the words, "who is not authorized by his Government to make such requisitions."

With this exception Her Majesty's Government acquiesces in Article IX, as it also agrees to Articles X and XI of the new Draft.

Earl Granville has desired me, in communicating to you the enclosed Draft of Treaty, to express the hope of Her Majesty's Government that the slight alterations which it has been found absolutely necessary to make in your Draft, may not prove an obstacle to the speedy conclusion of a Treaty of such vast importance to the two Countries.

I have the honour to be, with the highest consideration,

Sir,

Your obedient Servant,

EDW'D. THORNTON.

Notes by Henry O'Connor

Extradition Treaty Gr. Br. Amended draft, Sir Ed. Thornton's note of the 25th inst.

Bureau of Claims, October 31st, 1873.

ART. I.

"Convicted" in fifth line of 1st paragraph and "whether as a principal or as an accessory either before or after the fact" added. Convicted is a proper amendment in most of the States accessories upon the fact are charged and tried as principals. I don't think the amendment objectionable as proposed. The phraseology of first and last paragraphs is changed very much.

Crime *5*. Add "and other British possessions west and north of the United States"

5a. Should be omitted, the terms are too vague and general. Indictable offences are not necessarily felonious. In most of the States malicious mischief and injury to property are misdemeanors punishable by fine or imprisonment in county prisons, and are not classed as Felonies.

7a. Especially the last clause i.e. "Subornation of perjury" is a dangerous offence to include disappointed parties in civil suits may make it an instrument of personal revenge.

Crime 10*a*. Is *obnoxious* to the same objections as 7*a* and besides the law in the United States & England gives parties injured from this cause ample redress by civil remedy. It may well be doubted whether the policy of multiplying offences is calculated to render the criminal code more effective.

Crime 14*a*. Is another offence of the same class with 7*a* and 10*a*, its retention in a list of crimes for extradition is of more than doubtful propensity.

With the above changes Art. I will conform to the conclusions of the conference draft of June 3rd, 1873, between Mr. Fish and Sir Ed Thornton.

ART. II.

Articles 2, 3 and 4 of that (conference) draft being omitted and 5, being now Art. II is right.

ART. III.

Being 6 of (conference) is amended in accordance with Mr. Fish's suggestion is also right.

ART. IV.

Being 7 of the conference draft is not amended as suggested by Mr. Fish. Sir Ed Thornton's reasons are that the British Act of 1870 is imperative on that point. I think the words "or to subject him to a civil suit or action" would render it more complete.

ART. V.

This is 9 of conference draft 8 being omitted as suggested by Mr. Fish, and also his amendment to this adopted.

Is not this Article open to the objection urged against similar provisions in the proposed Belgian treaty, i.e., that it allows the statutes of limitations of our country to be operative in the other ones.

ART. VI.

This being 10 of conference draft is amended in accordance with Mr. Fish's suggestions and is unobjectionable.

ART. VII.

This being 11 of conference draft has Mr. Fish's proposed amendment and is right.

ART. VIII.

Being 12 of conference draft is amended as suggested by Mr. Fish, and is now right.—

ART. IX.

This being 14 of conference draft, the amendments proposed by Mr. Fish are not adopted literally but the substance of the amendments are embraced and I think the article as it now stands unobjectionable.

ARTS. X AND XI.

Being 15 and 16 of the conference draft are as mutually agreed upon.

While Art. 13 of the conference draft is omitted in the present one in accordance with the suggestion of Mr. Fish, Sir Ed Thornton represents that H. M's. Govt. are very anxious to retain it and hopes the Secretary of State will re-consider.

I think its incorporation in Treaty would work injustice to the U. S. for the reason, urged by Mr. Fish in the early stage of the negotiations, i.e., the vast extent of our territory, the U. S. might and probably would be subjected to much greater expense than G. B. and more than her share.

HENRY O'CONNOR.

Note from Fish to Thornton, dated November 1, 1873.

Department of State,
Washington, 1st Nov. 1873.

The Right Honorable
Sir Edward Thornton, K C.B.
&c &c &c

My dear Sir Edward—

If you have on hand any spare copies of the last draft of the Extradition Treaty, one copy of which accompanied your note of the 25th ultimo, I will thank you to favor me with two additional copies.

Very faithfully yours,

HAMILTON FISH.

United States Counter-Draft dated Jan. 19, 1874

UNITED STATES.

COUNTER-DRAFT.

~~October 1873.~~
January 19, 1874.

Draft of a Treaty of Extradition between Great Britain and the United States of America.

HER Majesty the Queen of the United Kingdom of Great Britain and Ireland, and the United States of America, having judged it expedient, with a view to the better administration of justice, and to the prevention of crime within their respective territories and jurisdictions, that persons charged with or convicted of the crimes hereinafter enumerated, and being fugitives from justice, should, under certain circumstances, be reciprocally delivered up; They have named as their Plenipotentiaries to conclude a Treaty for this purpose, that is to say:

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, the Right Honourable Sir Edward Thornton, a Member of Her Majesty's Privy Council, Knight Commander of the Most Honourable Order of the Bath, Her Envoy Extraordinary and Minister Plenipotentiary to the United States of America;

And the President of the United States of America, Hamilton Fish, ~~Esquire,~~ Secretary of State of the United States:

Who, after having communicated to each other their respective full powers, found in good and due form, have agreed upon and concluded the following Articles:—

ARTICLE I.

It is agreed that Her Britannic Majesty and the United States shall upon mutual requisitions by them or their Ministers, Officers or Authorities, respectively made, deliver up to justice all persons who being charged with or convicted of any of the crimes enumerated in the schedule annexed to this Article, committed within the jurisdiction of either, such persons being actually within such jurisdiction when the crime was committed, shall seek an asylum or shall be found within the jurisdiction of the other, Provided

Note, Fish to Thornton, dated Jan. 20, 1874

Department of State
Washington, 20 Jan'y 1874.

The Right Honorable
Sir Edward Thornton, K.C.B.
&c &c &c

My dear Sir Edward:

I send herewith the draft of the proposed Extradition Treaty, with the alterations suggested in our interview of yesterday, I hope that they may prove satisfactory. Do you think it important to add an article referring to the existing treaty, to the effect that after the new treaty may come into operation, the Extradition article in the Treaty of 1842, shall be deemed inoperative.

I remain,
My dear Sir Edward,
Very truly yours,
HAMILTON FISH.

Note from Thornton to Fish dated January 21, 1874

File

(Department of State Jan 21 1874 Received)

BRITISH LEGATION,
Washington.

January 21, 1874.

The Hon'ble Hamilton Fish
&c.. &c. &c.

My dear Mr. Fish,

I am much obliged to you for your letter of yesterday, transmitting the Draft of the proposed Extradition Treaty, with the alterations suggested in our interview of the previous day.

With regard to your question whether I think it important to add an Article referring to the existing Treaty, does it appear to you necessary to say more upon that subject than is contained in the first Paragraph of Article X of the Draft?

But not to give you the trouble of answering this, I will do myself the pleasure of paying you my usual visit to-morrow.

Believe me,

Very truly yours,

EDW. THORNTON.

United States Draft March, 1874

UNITED STATES.

DRAFT.

March 1874.

Draft of a Treaty of Extradition between Great Britain and the United States of America.

HER Majesty the Queen of the United Kingdom of Great Britain and Ireland, and the United States of America, having judged it expedient, with a view to the better administration of justice, and to the prevention of crime within their respective territories and jurisdictions, that persons charged with or convicted of the crimes hereinafter enumerated, and being fugitives from justice, should, under certain circumstances, be reciprocally delivered up; They have named as their Plenipotentiaries to conclude a Treaty for this purpose, that is to say:

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, the Right Honourable Sir Edward Thornton, a Member of Her Majesty's Privy Council, Knight Commander of the Most Honourable Order of the Bath, Her Envoy Extraordinary and Minister Plenipotentiary to the United States of America;

And the President of the United States of America, Hamilton Fish, Esquire, Secretary of State of the United States;

Who, after having communicated to each other their respective full powers, found in good and due form, have agreed upon and concluded the following Articles:—

ARTICLE I.

It is agreed that Her Britannic Majesty and the United States shall, upon mutual **requisitions** ~~recognition~~ by them or their Ministers, officers, or authorities respectively made, deliver up to justice all persons who, being charged with or convicted of any of the crimes enumerated in the schedule annexed to this Article [whether as a principal or as an accessory either before or after the fact,] committed within the jurisdiction of either, such persons being actually within such jurisdiction when the crime was committed, shall seek an asylum or shall be found within the jurisdiction of the other. Provided that this shall only be done upon such evidence of criminality as, according to the laws of the place where the fugitive or person so charged shall be found, would justify his apprehension and commitment for trial if the crime or offence had there been committed, and the respective Judges and other Magistrates of the two Governments shall have power, jurisdiction, and authority, upon complaint made under oath, to issue a warrant for the apprehension of the fugitive or person so charged, that he may be brought before such Judges or other Magistrates respectively, to the end that the evidence of criminality may be heard and considered, and if on such hearing the evidence be deemed sufficient to sustain the charge, it shall be the duty of the examining Judge or Magistrate to certify the same to the proper executive authority, that a warrant may issue for the surrender of such fugitive.

The expense of such apprehension and delivery shall be borne and defrayed by the party who makes the requisition and receives the fugitive.

SCHEDULE.

1. Murder, or **assault with intent to commit** ~~attempt, or conspiracy to~~ murder.

2. Manslaughter.

3. Counterfeiting, or **altering** ~~uttering~~ money, or uttering counterfeit or altered money.

4. Forgery, counterfeiting, or altering or uttering what is forged, or counterfeited, or altered.

5. Embezzlement or larceny, where the value is not under 500 dollars or 100*l*., when extradition is sought by or from Canada, or 1,000 dollars or 200*l*. when it is sought by or from any other of Her Majesty's dominions except Canada. The former of the two crimes signifies embezzle-

ment of public moneys, committed within the jurisdiction of either party by public officers or depositaries; or embezzlement by any person or persons, hired or salaried, to the detriment of their employers, when the crime is subject to punishment by the laws of the place where it was committed.

6. Crimes **by bankrupts** against bankruptcy laws.

7. Fraud by a bailee, banker, agent, factor, trustee, or director, or member or officer of any company, and which fraud is made criminal by any law for the time being in force.

8. Perjury, or subornation of perjury.

9. Rape.

10. Abduction.

11. Child-stealing.

12 ~~11.~~ Kidnapping.

13 12. Burglary, or housebreaking.

Query.—Are burglary & housebreaking the same offence.

14 13. Arson.

15 14. Robbery.

16 15. Threats by letter or otherwise with intent to extort.

17 16. Piracy, by law of nations committed on board of or against a vessel belonging to the nation asking extradition.

18 17. Criminal sinking or destroying such a vessel at sea, or attempting or conspiring to do so.

19 18. Assaults on board such ship on the high seas, with intent to destroy life.

20 19. Revolt, or conspiracy to revolt, by two or more persons on board such a ship on the high seas against the authority of the master.

Note, Fish to Benjamin Moran, dated April 14, 1874

No. 551. Department of State,
Washington, 14 April, 1874.

Benjamin Moran, Esq.
&c &c &c

Sir:

I have to acknowledge the receipt of your No. 471 of the 28th ultimo, accompanied by copies of British Extradition Treaties with Austria, Brazil and Sweden, and of a Consular Convention with Brazil.

The clause contained in these Extradition Conventions relating to the non-surrender of subjects of the power upon which the demand may be made, referred to in your despatch, is often inserted in treaties with Powers who assert national jurisdiction over the persons of their subjects for offenses committed outside of the territorial jurisdiction. The treaties of the United States with Austria, Baden, Bavaria, Hanover, Italy, Nicaragua, North Germany and Sweden, contain stipulations to this effect.

I am, Sir,
Your obedient servant,

HAMILTON FISH.

Digest of Memorandum of Proposed Changes to Draft of Treaty Submitted by Thornton and bearing date March, 1874.

May 2, 1874.

Memorandum of objection & of proposed changes to the draft of an Extradition Treaty between the U. S. & G. B. submitted by Sir Ed Thornton & bearing date "March 1874."

~~Mr. Fish in behalf of the U. S.~~

I. In line 2 of Article I substitute "requisitions" for "recognition"—it is supposed that this is a mere typographical Error.

II. ~~Mr. Fish says that the~~ U. S. cannot assent to the words "Whether as a principal or as an accessory either before or after the fact" in the 7 & 8 lines of the same Article, which have been again introduced since the last conference.

It would be subjecting ~~to extradition for~~ too large a class of persons to extradition, for ~~any~~ which con-

nection with ~~a large class of~~ the very extended offences enumerated in the Schedule, some of them admitting the possibility of implicating as accessories, on ex parte testimony, persons wholly free from criminality or of ~~actual~~ being knowingly connected with the offence.

III. ~~Mr. Fish says that~~ The U. S. must insist
~~III.~~ ~~after in At the 31st line of same article insert~~ ~~The express~~ upon inserting the words which have been left out from the former draft at the close of 31st ~~last~~ line of same article, viz.

"The expense of such apprehension and delivery to be borne and defrayed by the party who makes the requisition and receives the fugitive."

This is in conformity with all the other extradition treaties of the U. S. These words are in the existing treaty with G. B. (1842)—The policy of the U. S. on this point is settled & cannot be departed from.

This will involve the writing out of Article 9 which has been reintroduced into this draft.

IV. ~~Mr. Fish suggests~~ The substitution in line 33 (1st enumeration of crimes) of the words *"assault with intent to commit"* instead of the words *"attempt or conspiracy to"* is deemed advisable & is suggested.

The language proposed to be substituted is familiar to the Courts of both Countries, & the crime thus designated is known to both English & American law—whereas the language "attempts or conspiracy to murder" belongs to the criminal code of the Latin nations—& may lead to confusion, doubt & even to litigation in the Courts of the two contracting parties.

V. ~~Mr. Fish thinks~~ The word "uttering" in the 35 line (3d enumeration of crimes) is supposed to be a misprint & should be "altering"

VI. ~~Mr. Fish says that~~ In view of the strong wish expressed by the British Gov. to omit the limitation of amounts in the cases of Embezzlement, ~~Forgery~~ larceny, & the reasons assigned therefor ~~the U. S.~~ the words "when the value is not under 500 dollars or 100£, when extradition is sought by or from Canada, or 1000 dollars or 200£ when it is sought by or from any other of Her Majesty's dominions except Canada" may be stricken out of 5th enumeration of crimes.

VII. ~~He says that~~ The U. S. cannot assent to the omission of the words "by bankrupts" after the word "crimes" in the sixth enumeration of crimes & which words have been omitted in the present printed draft, but ~~were in the preceding one~~ had been previously inserted. ~~That~~ The Bankruptcy laws of a Country are municipal & purely local in their theory, & in their details; these details varying in different countries, with the policy or customs of this Country, in pursuance of which a comparatively venial connection with an offense under their laws may be made a statutory offence. There is much hesitancy in making ~~That~~ this class of crimes even as limited ~~by the~~ to Bankrupts themselves the subject of extradition but ~~that~~ the extension of the liability to extradition to others than the bankrupts themselves would be dangerous.

VIII. Typographical errors are indicated in the 11th enumeration, which should be "child-stealing" & and in the numbering of the subsequent classes—& a want of punctuation in that numbered "12" in the draft.

IX. ~~He says that~~ The U. S. cannot accept Article IV as proposed. The decision whether the offence charged be or be not of a political character, as also the decision ~~as~~ whether or not the requisition for surrender has in fact been made with a view to try the alleged fugitive for an offence of a political character must rest with the Political department of the Government. In the event of a question arising from the refusal ~~of an of the Gov.~~ to surrender on the ground of an alleged political character attaching to the offence charged neither Gov. w— be satisfied if the other were to shelter itself under the decision of some mere Magistrate or Justice or even of a Court. The designation of the Magistrate or Court before whom the fugitive is brought is made by the respective Govs. & however dignified & learned, may be the ~~one~~ Magistrate or the Court to which at present the duty of deciding may be confided, subsequent legislation may in either country extend it to other & less imposing tribunals. The responsibility of the decision must be with the Govn. without any implication or intimation in the Treaty or otherwise that the Dept. of the Gov. which holds intercourse with other Powers can be relieved of any of the responsibility of decision by resting upon the opinion or decision of any ~~Magistrate Justice~~ ~~The~~ Court, or of any Judicial officer.

Such opinion if sought or relied upon is purely an internal or private advice. Face to face with the other Gov., & on a question of a nature calculated, at times, to involve more or less of feeling and possibly something of irritation ~~there should~~ each is entitled to the opinion or decision of the Gov. & not the opinion of some Magistrate or Court ~~to whom~~ designated by that Gov. ~~If accepted with this understanding Mr. Fish~~ With this view it is proposed ~~therefore~~ to substitute in lines 6, 7 & 8 the words "of the Party on whom the demand is made" for the words "of the Magistrate, Justice, Judge, or Court before which he is brought, or of the Secretary of State."

X. The Article XI of the proposed draft cancels the Treaty of 1842 when the new one comes into operation, except as to proceedings which may have actually been taken or commenced.

~~Unless one exe~~ As the Treaty will not be retroactive & will not apply to offences committed prior to its coming into operation it will be necessary to except from the non-retroactive character of ~~the~~ such Treaties, officers included within the provision of the existing Treaty.

For that purpose the following additional Article is proposed

"Article—The provisions of this Treaty shall not apply to any crime or offence (2) **other than those enumerated in Article X of the Treaty between the U. S. & G. B. concluded at Washington on the ninth day of August, 1842,** (1) *committed prior to the date* ~~of the exchange~~ *when the present Treaty shall be brought into operation.*" [May 4 Sir Ed Thornton called & suggested the transposition of the sentences as marked] whenever persons guilty at that time of offences for which extradition is made under the Treaty of 1842 will not be liable to be surrendered.

XI. The blank in the second line of Art. XI may be filled in as is thought advisable. It is suggested that two months will be long enough to

XII. In Art XII It is suggested that the Ratifications be exchanged at Washington & that instead of naming a definite time for the exchange, to say that it take place "as soon as may be thereafter." i.e. after the ratification.

The Session of the Senate is now far advanced & possibly the Treaty may not be now acted upon at its present session.

Note enclosing memorandum, Fish to Thornton dated May 2, 1874

Department of State
Washington, 2 May, 1874

The Right Honorable
Sir Edward Thornton, K.C.B.
&c &c &c

Sir:

In accordance with our understanding at the interview held on the 30th ultimo, I have the honor to enclose herewith, a memorandum of the objections presented, and of the changes proposed to the draft ("March 1874") submitted by you for an Extradition Treaty between the United States and Great Britain.

I have the honor to be, with the highest consideration, Sir,

Your obedient servant,
HAMILTON FISH.

Memorandum

Memorandum of objections and of proposed changes to the draft of an Extradition Treaty between the United States and Great Britain, submitted by Sir Edward Thornton, and bearing date "March 1874."

I. In line 2 of Article I substitute "requisitions" for "recognition"—it is supposed that this is a mere typographical error.

II. The United States cannot assent to the words "whether as a principal or as an accessory either before or after the fact," in the 7th and 8th lines of the same Article, and which have been again introduced since the last conference.

It would be subjecting too large a class of persons to extradition, for remote connection with the very extended class of offences enumerated in the schedule—some of them admitting the possibility of implicating as accessories on exparte testimony, persons wholly free from criminality or of being knowingly connected with the offence.

III. The United States must insist upon restoring the words which have been left out from the former draft, at the close of the 31st line of same Article, viz:

"The expense of such apprehension and delivery to be borne and defrayed by the party who makes the requisition and receives the fugitive."

This is in conformity with all the other Extradition Treaties of the United States. These words are in the existing treaty with Great Britain (1842). The policy of the United States on this point is settled and cannot be departed from.

This will involve the striking out of Article IX which has been reintroduced into this draft.

IV. The substitution in line 33 (1st enumeration of crime) of the words "*assault with intent to commit*" instead of the words "*attempt or conspiracy to*" is deemed advisable and is suggested.

The language proposed to be substituted is familiar to the courts of both countries, and the crime thus designated is known to both English and American law, whereas the language "attempt or conspiracy to murder" belongs to the criminal code of the Latin nations, and may lead to confusion, doubt and even to litigation in the courts of the two contracting parties.

V. The word "uttering" in the 35th line (3d enumeration of crimes) is supposed to be a misprint, and should be "altering."

VI. In view of the strong wish expressed by the British Government to omit the limitation of amounts in the cases of embezzlement, and of larceny, and the reasons assigned therefor, the words "where the value is not under 500 dollars or 100 £ when extradition is sought by or from Canada, or 1,000 dollars or 200 £ when it is sought by or from any other of Her Majesty's dominions except Canada" may be stricken out of the 5th enumeration of crimes.

VII. The United States cannot assent to the omission of the words "by bankrupts" after the word "crimes" in the sixth enumeration of crimes and which words have been omitted in the present printed draft, but had been previously inserted. The Bankruptcy laws of a country are municipal and purely local in their theory, and in their details; these details varying in different countries, with the policy or customs of the country, in pursuance of which a comparatively venial connection with an offence under these laws, may be made a statutory offence. There is much hesitancy to making this class of crimes even as limited to

Bankrupts themselves, the subject of extradition, but the extension of the liability to extradition to others than the bankrupts, themselves would be dangerous.

VIII. Typographical errors are indicated in the 11th enumeration which should be "child stealing," and in the numbering of the subsequent classes—and a want of punctuation in that numbered "12." in the draft.

IX. The United States cannot accept Article IV as proposed.

The decision whether the offence charged be or be not of a political character, as also the decision whether or not the requisition for surrender has in fact been made with a view to try the alleged fugitive for an offence of a political character must rest with the Political department of the Government.

In the event of a question arising from the refusal to surrender on the ground of an alleged political character attaching to the offence charged, neither Government would be satisfied if the other were to shelter itself under the decision of some mere Magistrate or Justice, or even of a Court. The designation of the Magistrate or Court before whom the fugitive is brought is made by the respective Governments, and however dignified, and learned, may be the Magistrate or the Court to which at present the duty of deciding may be confided, subsequent legislation may in either country extend it to other and less imposing tribunals.

The responsibility of the decision must be with the Government, without any implication or intimation in the Treaty or otherwise, that the Department of the Government which holds intercourse with other Powers can be relieved of any of the responsibility of decision by resting upon the opinion or decision of any court or of any judicial officer. Such opinion if sought, or relied upon, is purely an internal or private advice. Face to face with the other Government, and on a question of a nature calculated, at times, to involve more or less of feeling and possibly something of irritation, each is entitled to the opinion and decision of the Government, and not the opinion of some Magistrate or Court designated by that Government. It is proposed with this view to substitute the words "of the Party on whom the demand is made" for the words "of the Magistrate, Justice, Judge or Court before which he is brought, or of the Secretary of State."

X. The Article XI of the proposed draft cancels the Treaty of 1842, when the new one comes into operation,

except as to proceedings which *may have actually been taken or commenced.*

As the Treaty will not be retroactive, and will not apply to offences committed prior to its coming into operation it will be necessary to except from the non-retroactive character of each treaties, offences included within the provisions of the existing Treaty.

For that purpose the following additional Article is proposed:—

"Article—The provisions of this Treaty shall not apply to any crime or offence committed prior to the date when it shall be brought into operation, other than those enumerated in Article X of the Treaty between the United States and Great Britain concluded at Washington on the ninth day of August, 1842."

Otherwise persons guilty at that time of offences for which extradition is made under the Treaty of 1842, will not be liable to be surrendered.

XI. The blank in the 2d line of Article XI, may be filled in as is thought advisable. It is suggested that *two* months will be long enough to.

XII. In Article XII—It is suggested that the Ratifications be exchanged at Washington and that instead of naming a definite time for the exchange to say that it take place as soon "as may be thereafter," i.e. after the ratification.

The session of the Senate is now far advanced, and possibly the Treaty may not be acted upon at its present session.

Note from Thornton to Fish,
dated June 11, 1874

The Honorable
Hamilton Fish,
&c., &c., &c.

British Legation, Washington,
June 11, 1874.

My dear Mr. Fish,

I grieve to say that on my return home from the State Department I found a Telegram from Lord Derby in which he says that after full consideration it is impossible for the Government to comply with your proposal respecting political offences in Article IV of the proposed Extradition Treaty, as it would be at direct variance with Section 3 of the Act of 1870, and that it would be useless to ask Parliament to alter the Act in that respect.

Do you still think it would be impossible to adopt the Article in the Treaty with Germany? Lest you should not have a Copy of it, I enclose you one. It would be truly disheartening that all our work should go for nothing.

Believe me, very truly yours,

EDW'D. THORNTON.

A fugitive criminal shall not be surrendered, if the offence, in respect of which his surrender is demanded, is one of a political character, or if he prove that the requisition for his surrender has in fact been made with a view to try or punish him for an offence of a political character.

Digest of "Memorandum, as to the Negotiation for New Treaty of Extradition Between the United States and Great Britain, Taken from Official Correspondence" and made some time after June 11, 1874

MEMORANDUM,

as to the negotiation for a new treaty of Extradition between the United States & Gt. Britain, taken from official correspondence.

Sept. 22, 1870. Br. Min. encloses copy of Extradition Act of 1870 and says her Majesty's Govt. is prepared to enter into an arrangement within the provisions of the Act.

Oct. 19, 1870. Mr. Fish acknowledges receipt of above note & says matter will receive consideration.

Dec. 15, 1870. Br. Minister refers to conversation in October & to observations Mr. Fish made which were conveyed to Lord Granville. Is instructed to state; first—It is not required to include in treaty all the crimes mentioned in first schedule of the Act, but all the crimes mentioned in the treaty must be found in the act. *Second*: That a provision in the treaty for trying a fugitive on surrender for any other than the Extradition offence would be inadmissible, and that the treaty must include a provision just the opposite. *Third*: That the stipulation authorizing detention for a period longer than two months would be objectionable, although it does not follow that a criminal would be entitled to release at the end of two months. He would however be entitled to apply for a release. *Fourth*: The treaty may prescribe one set of offences for Canada and another for Gt. Britain provided each set comes within the

list specified in the schedule of the Ex'n Act. *Fifth*: The treaty should not stipulate for Extradition in cases of crimes as construed by municipal law of the two states at the time of the treaty, but as construed by British Law existing at the time of their commission; otherwise a person might be surrendered for an act not constituting a crime. *Sixth*: No objection to a stipulation that on surrenders for larceny, the stolen property should amount to a certain sum. *Seventh*: Kidnapping male adults is not within the crime of abduction which applies to females only & cannot therefore be included in the treaty.

January 27, 1871. Mr. Fish states it would be impossible for this Govt. to stipulate for an extradition of persons for crimes which may be created or changed in definition by foreign enactments subsequent to the treaty:—says the U. S. understands the 27th section of the Act of 1870 as giving effect to existing arrangements, and although inconvenient we must suffer under them until Parliament shall allow Her Majesty's Govt. to make better ones.

January 30, 1871. Br. Min. acknowledges receipt of above note & says a copy shall be forwarded to Lord Granville & expresses the opinion that construction of crimes by British Law refers only to criminals who may be found in Gt. Britain, not those who may be found in the U. S.

Apl. 17, 1871. Br. Min. says he has forwarded to Lord Granville a copy of Dept's note of Jany. 27, and that he is instructed by Lord Granville to say that the provision in the British Act regarding the construction of crimes by laws existing at the time of their commission not at the time of the treaty in no way interferes with the present practice in regard to surrenders under the treaty of 1842, which provides for surrender only "upon such evidence of criminality as according to the laws of the place where the criminal should be found would justify his apprehension & commitment for trial if the crime had been there committed." U. S. may refuse to surrender a person guilty of a crime according to Br. Law which is not a crime according to laws of U. S. & vice versa. Forwards a draft treaty. Says it has been thought most convenient to state to the several Powers the views of her Majesty's Govt. leaving it to each to suggest amendments. Says U. S. in 1848 passed a general extradition Act to give effect to treaties and Gt. Britain has followed her example. Says under Act of 1870 all or only a part of the crimes therein mentioned can be included in the treaty. States that the clause providing that

citizens or subjects be not surrendered must be omitted, for not only is the language of the two countries the same, but the admission of the plea of nationality as a bar to surrender would give rise to such difficulties as would probably neutralize the benefit of the treaty.

[Draft not bound with note]

April 3, 1872. Br. Min. refers to conversation before leaving Washington & to draft contained in note of April 17, 1871 and says his purpose was to obtain Mr. Fish's views, that he communicated them to his Govt. while in England and that he has forwarded the substance of Mr. Fish's observations to For. Office. British Govt. has examined alterations with desire to meet the suggestions of the U. S. Says the power of the Queen to make a treaty is derived solely from Act of 1870, it is not therefore possible to admit stipulations inconsistent with that Act. Mentions suggestions in order;

ARTICLE I. Lord Granville is glad to perceive that we concur in opinion that no exception to surrender should be made in favor of natives. Says as to limitation of amount in larceny cases the expense of extradition would prevent frivolous applications. States several objections to this limitation. Says limitations suggested with regard to crimes in Nos. 16, 17, 18 & 19 of Extrad'n offences as well as the omission of the crime of *Rape* may be accepted. Regrets it is not possible to add Kidnapping as it is not included in Act of 1870. Says Lord Derby cannot concur in opinion that the last paragraph of Article I applies only to the laws of evidence of the country in which the criminal may be found. The offence with which a fugitive is charged must be one against the laws of both countries. Does not understand the meaning of the word "omissions" in the passage introduced & would suggest that it be omitted.

ARTICLE II. Cannot assent to the proposed omission of the words "of England" because they are in the act of Parliament. Cannot omit the fifteen days delay even on consent of prisoner.

ARTICLE III. Suggests that giving prisoner the right to elect before what magistrate he shall appear might be inconvenient.

ARTICLE IV. As to inquiry if arrest can be made on the mere request of the Minister so as to provide for cases where advice of absconding arrives by telegraph before the depositions can arrive, says a criminal can be arrested only,

first; on warrant by police magistrate on order from Sec. of State and on evidence to justify the issue of the warrant; *second;* on warrant by police magistrate or justice of the peace in any part of the Kingdom on evidence & after proceedings to justify the issue of the warrant. It would therefore be beyond the power of Her Majesty's Govt. to arrest any person summarily without a warrant. A fugitive must be in or suspected of being in Great Britain. Cannot accept amendments of U. S. Some alterations have been made in the wording.

ARTICLE V. Suggests that the words "in the United Kingdom" superfluous.

ARTICLE VI. Unnecessary since no exception to surrender in favor of natives.

ARTICLE VIII. Her Majesty's Govt. cannot omit the words objected to. A fugitive will not be surrendered if he proves that his surrender is sought for the purpose of trying him for a political offence.

ARTICLE IX. Her Majesty's Govt. accepts amendment but suggests omitting words "So as to entitle it to be read in evidence." Suggests substitution of "one of her Majesty's principal secretaries of State" for the words "Her Majesty's principal Secretary of State for Foreign Affairs."

ARTICLE XI. No objection to specifying that demand must be made by diplomatic agent.

ARTICLE XII. Says the words "under prosecution" would cover any proceeding in accordance with criminal law instituted against the prisoner whether he be in custody or not. As to last paragraph Lord Granville awaits inquiries to be made here.

ARTICLES XIII & XIV. Modifications agreed to.

ARTICLE XV. Willing to make slight alteration in paragraph 2, to the effect that in case of there being no consular officer at the seat of Govt. of a colony requisition can be made by the chief consular officer within the jurisdiction of the Gov'r of the Colony. Last clause of paragraph 3 empowering the Governor to refer the question of surrender to the Home Govt. not essential & may be omitted.

ARTICLE XVI. Says as tenth article of treaty of 1842 would be suppressed by new treaty a few words have been added cancelling that article from time when the new treaty shall go into effect, except as to proceedings already taken.

[The marked draft is not bound with note.]

Sept. 21, 1872. Br. Min. sends copies of treaties made with Germany & Belgium.

Apl. 10, 1873. Br. Min. says draft of proposed extradition treaty forwarded to Lord Granville. He transmits two copies of drafts reprinted with such alterations as Her Majesty's Govt. can agree to, together with some slight modifications desired by Great Britain. They are as follows;

ARTICLE I. Crime 5; after words "embezzlement or larceny" slight alteration. Minimum value for larceny fixed at $500. as regards Canada, and $1000 as regards the rest of Gt. Britain. Crime 6; "obtaining money or goods by false pretences" has been omitted with regret. Hopes for reinsertion. Rape has been reinserted.

ARTICLE III. No objection to substitution of words "within the jurisdiction" for "in the territories." Word "or" substituted for "and." No objection to paragraph added which is now printed.

ARTICLE VII. No objection to words "or of the justice judge or commissioner named in article III of this treaty"

ARTICLE VIII. Slight addition made so as to include colonial documents.

ARTICLE XI. Does not concur in opinion that when a man is out on bail he is in custody. Words "out on bail" have therefore been added. In line 12 no objection to substituting "complainant" for "injured party."

ARTICLE XII. No objection to alterations.

ARTICLE XIII. Notwithstanding our objection Br. Govt. would prefer substitution of Article XIV of German treaty which has been inserted Gives reasons. Expresses hope that objection will not be made. Article 14 of German treaty provides that expenses of Extradition be borne by surrendering party up to time when fugitive is placed on board ship.

October 25, 1873. Her Majesty's Govt. carefully considered counter draft transmitted 12th June to Lord Granville. With some slight modifications draft can be accepted. They are;

ARTICLE I. In last line but two of first paragraph the words "or convicted" have been inserted after the words "charged with" and some words added to include accessories as well as principals. Canada desires that the $1000. limit of larceny be applied to her & that "embezzlement" be legally defined. After crime 5 Her Majesty's Govt.,

under power of Act of 1873 desires to add "malicious injury to property if the offence be indictable" as a new crime, and after No. 7, to be called 7a., "perjury or subornation of perjury," and prefers the words "crimes against bankruptcy law" to "crimes by bankrupts against bankruptcy law" for the sake of including accessories. Crime 10. Words "or Kidnapping" have been added; and after crime 10, as 10a., "false imprisonment." Expresses desire to retain the words "or to do grievous bodily harm" in crime 17. Accepts other amendments proposed in Article I, including, if the U. S. should insist upon it, the final provisions as to expenses.

ARTICLES II, III, & IV of original British draft may be omitted.

ARTICLE V of original British draft (article II of the new draft) remains the same.

ARTICLE VI original draft (article III new draft) altered as proposed by the United States.

ARTICLE VII (article IV new draft).. Before whom a criminal should prove that his extradition is sought for the purpose of trying him for a political offence. British Government regrets it cannot omit the words between brackets, viz; "of the Magistrate, Justice, Judge, or court before which he is brought or of the Secretary of State." Act of 1870 is imperative, and proposed omission would be an infringement. Has amended the article with a view to meeting our wishes.

ARTICLE VIII of original draft may be omitted.

ARTICLES IX, X, XI, & XII (or V, VI, VII, & VIII of the new draft) amended as proposed.

ARTICLE XIII. Her Majesty's Govt. would prefer retaining Article XIII of old draft which provides that surrendering party bear extradition expenses up to time of putting fugitive on board ship. Reasons for this preference.

ARTICLE XIV (or Article IX new draft) Her Majesty's Govt. thinks the words "under instructions from his Government" ambiguous, and desires to substitute therefor "who is not authorized by his Government to make such requisitions." With this exception acquiesces in Art. IX.

Article X and XI of new draft agreed to.

Hopes treaty can be made.

May 2, 1874. Mr. Fish to Sir Edward Thornton. Memorandum of objections to and proposed changes of British draft of March 1874.

In line 2, Art. I substitute "requisitions" for "recognition."

Words in Art. I "whether as a principal or as an accessory either before or after the fact" cannot be assented to.

Expense of extradition must be borne by demanding party. Policy of the U. S. on this point is settled & cannot be departed from.

Words "assault with intent to commit" desired instead of "attempt or conspiracy to."

"Uttering" on 35th line 3rd enumeration of crimes should be "altering."

Non-limitation of embezzlement or larceny to any fixed amount agreed to.

Accessories to violations of Bankrupt laws not to be subject to extradition.

Typographical errors indicated.

ARTICLE IV. Political Department of the surrendering Govt., & not a local court nor magistrate, should decide whether demand is made with a view to try the alleged criminal for a political offence. Consequently the words "of the party on whom the demand is made" have been substituted for "of the Magistrate, Justice, Judge, or court before which he is brought, or of the Secretary of State."

It will be necessary to except from the non retroactive character of the treaty the crimes mentioned in the existing treaty.

Treaty to come into operation two months after exchange of ratifications.

Ratifications to be exchanged at Washington as soon as possible.

June 11, 1874. British Min. regrets that he has received a telegram from Lord Derby stating, that, after full consideration, it is impossible to comply with proposal that the political department of the surrendering Govt. should decide whether demand is made with a view to try the alleged criminal for a political offence, and that it would be useless to ask Parliament to alter the Act in that respect. Enquires whether it is still impossible to adopt, for Article IV, of the proposed treaty, an article in the treaty bet. Gt. Britain & Germany. Says it would be truly disheartening if all the work should go for nothing.

Article in the treaty between Germany & Great Britain.

"A fugitive criminal shall not be surrendered, if the offence, in respect of which his surrender is demanded, is one of a political character, or if he prove that the requisition for his surrender has in fact been made, with a view to try or punish him for an offence of a political character."

Digest of Memos from Mr. Fish's Notes of Substance of Interviews with Sir Edward Thornton, made some time after September 3, 1874

EXTRADITION TREATY.

Memorandum from Mr. Fish's notes of substance of various interviews with Sir Edward Thornton.

October 6, 1870—Page 39—

Sir Edward Thornton referred to recent extradition act of Great Britain, which he says was considered with care. He thinks the second paragraph of the second section, giving authority to Her Majesty to limit the operation of the order, gives a scope and freedom to the action of the Council under the act.

Sub-division 2 Section 3, providing that a fugitive shall not be surrendered unless provision be made that he shall not, until restored, &c., be detained, for trial for offenses committed prior to his surrender, other than the crime on which he was surrendered, referred to.

Mr. Fish objects—first, we have no such laws; may require acts from each of the States: second, may be made for prior offenses of great magnitude other than the extradition offense. Makes suggestion that exception may be made in favor of his detention for crime of greater magnitude, the crimes to be arranged according to their estimate in gravity.

Sub-division 3, Section 3—inquires what is the meaning of the words "not being the offense for which his surrender is asked."

Section 17—under the act can the same treaty make different regulations and include different offenses?

In its application to Canada and Great Britain, it might be advisable to have different offenses for Canada and Great Britain.

Schedule 1—Does the act intend that each treaty shall provide for the mutual surrender of fugitives charged with every one of the crimes enumerated in Schedule 2?

States, as an objection, that the United States cannot agree to a treaty under which the crime is to be construed by any legislation of Great Britain, or by statute passed subsequent to the treaty. If the words "or by statute made before or after the passing of this act," are understood as reserving to Great Britain the right to alter the definition of any of the crimes provided for in the treaty, after its execution, the United States will not negotiate a treaty.

Mr. Fish objects to some enumerated offenses as inexpedient to be included in the treaty, such as embezzlement, obtaining money under false pretenses, crimes by bankrupt, threats by letters with intent to extort.

Objects to the omission of kidnapping. Objects also to abduction, unless defined.

The last three offenses, if agreed to at all, will require limitation and definition.

December 15, 1870—page 135.

Sir E. Thornton shows letter, with opinion of the Law Officers of the Crown on the questions discussed sometime since as to extradition act. Is to send a copy.

January 19, 1871—page 184.

Mr. Fish asked whether Sir Edward could not request his Government to amend their extradition act, so as to make it either definite or reciprocal as to the definition of crimes, saying we cannot allow Parliament to change the definition of crimes for which extradition may be asked.

May 25, 1871—page 49.

The British Minister refers to his proposal to negotiate an extradition treaty, and says that he expects to go to England, and to sail 24th June, and would like to arrange all such things prior to that date.

June 26, 1871—page 76.

Mr. Fish and British Minister examine English draft of proposed extradition treaty. Mr. Fish suggests several objections and reserves for further consideration the whole list of crimes to be included.

August 30, 1872—page 282.

Sir E. Thornton asks if there is any reason why we may not proceed to negotiate an extradition treaty. Mr.

Fish makes no direct reply, but asks if there were any difficulties interposed by the terms of the British act.

October 24, 1872—page 290.

Sir E. Thornton renews expression of wish to negotiate extradition treaty. Is told that there seemed to be objections arising from the act of Parliament, with respect to the definition of crimes, &c.

January 18, 1873—page 347.

Sir E. Thornton and Mr. Fish consider the draft of an extradition treaty, and note several amendments prepared by Mr. Fish after the British draft. Mr. Fish says that when the British Government assents to the amendments he will consult some of the Senators confidentially as to advisability of signing treaty.

June 5, 1873—page 46.

Mr. Fish and Sir E. Thornton refer to the extradition treaty. Monday next was named for an interview to discuss its provisions.

June 9, 1873—page 50.

Long session between British Minister and Mr. Fish, to consider proposed treaty.

The last British draft, dated March, 1873, was considered, section by section, and after conference it was concluded that Sir E. Thornton recommend to his Government the retention of the 10th article of the treaty of 1842—substitute for the list of crimes therein named the list as now agreed upon by him and Mr. Fish—also, making a verbal alteration in article 10, substitute "jurisdiction" for "territories."

It is proposed to omit articles 2, 3, 4, 8 and 13 of the British draft of March, 1873, and to amend articles 6, 7, 9, 10, 11, 12, 14 and 15, and change their numbers, as appears by a draft retained by Mr. Fish, a similar copy being taken by the British Minister.

June 12, 1873—page 51.

British Minister calls attention to proposed treaty discussed on June 9, and to provisions in the first article of British draft, providing for the prospective surrender of persons accused or convicted of crimes, and says the 10th article of the treaty of 1842, which was agreed to as a

substitute for the first article, provides only for the surrender of those charged, but not convicted of crimes. He asks if there is any objection to inserting the words "convicted of" for "charged with." Mr. Fish replies that he has no objection to consider the necessity of it, but he is not sure that the words "charged with" would not cover it. The question is reserved.

September 3, 1873—page 87.

[The British act to amend the act of 1870 was passed August 5, 1873.]

Mr. Fish inquires of the British Minister if he has any information as to the proposed extradition treaty. He says he has received a letter from Mr. Hammond, telling him he may expect instructions, and that it will probably be arranged. He says that Hammond writes that they think favorably of the changes proposed by Mr. Fish.

October 30, 1873—page 139.

Sir Edward inquires about extradition treaty, and some suggested alterations are informally considered, without reaching a conclusion.

November 13, 1873—

Sir Edward inquires whether Mr. Fish is ready to discuss the extradition treaty, which he is not.

January 15, 1874—page 208.

British Minister inquired about extradition treaty. Mr. Fish pointed out difficulty in fourth article of draft as to authority to pass upon the questions of political offenses; said we could not consent to refer them to the judicial officers of either government, and that the decision whether an offense was or was not political was of itself purely a political question, and must be decided by a political department of the Government. Further discussion adjourned until the following Monday.

January 19, 1874—page 211.

Sir E. Thornton called by appointment. Mr. Fish assents to the introduction of the words "or convicted" in the 5th line, article one, of the draft of October 18, 1873. Does not assent to the words [whether as a principal or as an accessory before or after the fact] in the 6th and 7th lines of the same article. Disagrees to the introduction

in the list of crimes of "malicious injury to property if the offense be indictable."

At the end of the 5th enumeration of crimes insert after "except Canada" the following: "the former of the two crimes signifies the embezzlement of public monies committed within the jurisdiction of either party by public officers or depositaries or embezzlement by any person or persons hired or salaried to the detriment of their employers when the crime is subject to punishment by the laws of the place where it is committed."

In number 6 [list of crimes] insert after the word "crimes" the words "by bankrupts."

Mr. Fish agrees to 7a "perjury or subornation of perjury"; agrees to "or kidnapping" in 10; disagrees to 10a "false imprisonment."

Mr. Fish insists upon insertion of the words "they being actually within such jurisdiction when the crime was committed" after the word "other" in the 6th line page 3. Then proposes a new form of the article whereby the list of crimes is placed in the schedule otherwise substantially as agreed to, which Sir Edward thinks would be an improvement and he will submit that to his government.

In article 4 Mr. Fish objects to the introduction of the words "of the magistrate, justice, judge or court before which he is brought" in line 6 and 7. Sir Edward says that their act of Parliament requires this reference and that if the objection to the words be insuperable it will require an amendment by Parliament of the existing law.

Mr. Fish states that we cannot consent under any circumstances to refer the decision of the question of the political character of the crime to the decision of the courts, and that it belongs properly to the political department which ought not to be allowed to shield itself behind an alleged judicial decision and he therefore insists peremptorily upon it.

In article 5 Mr. Fish objects to allowing the laws of the country in which the accused has taken refuge to determine the exemption from prosecution for an offense committed in any other country. Says that as framed the article will be liable to various constructions and give rise to misunderstandings, and probably to litigation, that the laws of the United States prescribe no limitation for offenses against State laws, and that the statutes of limitation in the several States differ. He therefore proposes instead of the concluding words "country where the accused shall have taken refuge" to insert "place where the offense was committed."

Mr. Fish calls attention in article 9 to what was probably an accidental omission of the words "or possessions" after the word "colony" in the second line from the end.

Is to send Sir Edward a copy of the draft, with the alterations proposed by him.

January 22, 1874—page 218.

Sir E. Thornton called to point out some clerical errors in the counter draft submitted to him yesterday.

April 16, 1874—page 272.

Sir Edward submitted a new draft, the principal points of difference from the last being—first, for a surrender of accessories, either before or after the fact; second, striking out the provisions whereby the demanding party is to bear the expense; third, the expression of a desire on the part of the British Government to strike out the limitation of value in cases of embezzlement and larceny; fourth, a restoration of the definition of crimes against bankruptcy laws; fifth, a separation of kidnapping from child-stealing as a distinct crime; sixth, the insistence of the British Government on the retention in article 4 of the words "magistrate, justice, judge or court before which he is brought." He says that in other respects he thinks it is like the last draft amended by Mr. Fish.

Mr. Fish suggests that perhaps it may be well in the schedule of crimes to change the expression "attempt to murder" to "assault with intent to commit murder," and says that he cannot consent to the change as to payment of expenses, and the discussion of the other questions he reserves.

April 30, 1874—page 287.

Sir Edward Thornton calls, and the extradition treaty is discussed.

May 4, 1874—page 292.

Sir E. Thornton suggested that the proposed new article of the treaty might be liable to misapprehension, and the following was agreed upon as a substitute:

"The provisions of this treaty shall not apply to any crime or offense committed prior to the date when it shall be brought into operation, other than those enumerated in article 10 of the treaty between the United States and Great Britain concluded at Washington on the 9th day of August, 1842."

September 3, 1874—page 372.

Mr. Watson, Chargé d'Affaires, reads a despatch from Lord Derby, referring to the proposed extradition treaty, and to an alleged communication from Sir E. Thornton of an interview with Mr. Fish in relation to article 4, and the refusal of surrender of criminals charged with political offenses, Mr. Fish having insisted that the political department of the Government should assume the decision whether the offense be political, and not leave this question to be determined by a police magistrate. Lord Derby's despatch assigns reasons why his government cannot consent to sign a protocol "as proposed by Mr. Fish" in substance declaring, that neither government will assume that the refusal to surrender is because of a decision by the courts that the offense is political, adding that the alleged fugitive may be discharged on habeas corpus on that ground.

Mr. Fish replies that he does not remember that the protocol was particularly his suggestion, but remembers that something was said about it, but that it had not impressed itself very strongly upon his memory; and that he had unequivocally refused to sign the treaty with an article allowing a police magistrate to decide a question of such delicacy, as whether an alleged crime was or was not of a political character, which questions the political branch of a government must take the responsibility of deciding.

A Bill amending Foreign Jurisdiction Acts, dated August 3, 1875

[38 & 39 VICT.] *Foreign Jurisdiction.* [H.L.] 1

A
BILL
INTITULED

A.D. 1875.

An Act for amending the Foreign Jurisdiction Acts.

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Validity of acts done under Order in Council under Foreign Jurisdiction Acts.

1. Where, by Order of the Queen in Council in pursuance of the Foreign Jurisdiction Acts, any court, judge,

magistrate, or officer acting or exercising jurisdiction within or in relation to any country or place out of Her Majesty's dominions, is authorised to make any decree or order concerning any person or matter brought within the cognizance of such court, judge, magistrate, or officer, every act or thing before or after the passing of this Act done or suffered beyond the limits of that country or place, under or as incidental to or consequential on such decree or order, or with a view to the carrying thereof into complete effect, shall be deemed to have been and to be legally done and suffered, as if the same had been done or suffered under such decree or order within that country or place.

Construction and short titles.

2. This Act shall be construed as one with the Foreign Jurisdiction Act, 1843, and the Acts amending the same, and together with those Acts may be cited as the Foreign Jurisdiction Acts, 1843 to 1875, and may be cited separately as the Foreign Jurisdiction Act, 1875.

[Bill 284.]

FOREIGN JURISDICTION.
[H.L.]

A BILL INTITULED
An Act for amending the Foreign Jurisdiction Acts.
(*Brought from the Lords 3 August 1875.*)

Ordered, by The House of Commons, *to be Printed* 3 *August,* 1875.

[Bill 284.]

Under 1 *oz.*

Foreign Jurisdiction Bill. [H.L.]

COMMONS AMENDMENT.

NOTE. *The line refers to Bill* [284.] *as first printed by the Commons.*

Line 8. After ("to") leave out ("make any decree or order concerning any person or matter brought within the

cognizance of such court, judge, magistrate, or officer, every act or thing before or after the passing of this Act done or suffered beyond the limits of that country or place, under or as incidental to or consequential on such decree or order, or with a view to the carrying thereof into complete effect, shall be deemed to have been and to be legally done and suffered, as if the same had been done or suffered under such decree or order within that country or place'') and insert (''order the removal or deportation of any person from that country or place, such removal or deportation, and any detention for the purposes thereof according to the provisions of the Order in Council, shall be as lawful as if the order of the court, judge, magistrate, or officer were to have effect wholly within that country or place'')

Dispatch No. 864 from Fish to Hoffman
Dated March 31, 1876
(Foreign Relations 76)

A. B. No. 864.

Department of State,
Washington, March 31, 1876.

Wickham Hoffman, Esquire
&c. &c. &c.

Sir:

Referring to previous correspondence in reference to the extradition of Winslow, in custody in London, I have now to acknowledge the receipt of your No. 39, under date of March 10, enclosing a note addressed to you by Lord Derby, of March 8th and your reply of the same day.

With General Schenck's No. 884 was enclosed a note from Lord Derby, dated February 29th, in which it was stated that Her Majesty's Secretary of State for the Home Department had drawn attention to subsection two, of the third section of the British extradition act of 1870, and feared that the claim, by this Government of the right to try Lawrence, (who had been recently surrendered) for crimes other than that for which he had been extradited, amounts to a denial that any such law as is referred to in the British act exists; and the disclaimer of this Government of the existence of any implied undrstanding, in respect to trial for crimes other than extradition crimes, together with the interpretation put upon the act of Congress of August 12, 1842, (which is doubtless an error for 1848),

preclude any longer the belief in the existence of an effective arrangement, which Her Majesty's Government had previously supposed to be practically in force, and it was added, that the Secretary for the Home Department was compelled to state that if he were correct in considering that no such law exists, he would have no power, in the absence of an arrangement, to order the extradition of Winslow, even although proper proceedings had been taken for that purpose. Lord Derby called General Schenck's attention to the intimation which he had received from the Home Department and requested that the matter be brought to the knowledge of this Government.

It is to be remarked, however, that in this note, the Foreign Office, as distinguished from the Home Office, expressed no opinion on the question involved, but confined itself to requesting that the views of the Home Office might be communicated to this Government.

A few days later, however; on the 8th of March, Lord Derby assumes the more advanced position previously occupied only by the Home Department, and writes as follows:

"Her Majesty's Government do not feel themselves justified in authorizing the surrender of Winslow until they shall have received the assurance of your Government that this person shall not, until he has been restored, or had an opportunity of returning to Her Majesty's Dominions, be detained or tried in the United States for any offense committed prior to his surrender other than the extradition crimes proved by the facts on which the surrender would be grounded"; and requesting that this decision be communicated to this Government.

To his note you made reply under date of March 8th, referring to the general practice for many years under the treaty, and calling attention to the construction given to the twenty-seventh section of the act of 1870 in the case of Bouvier.

No further correspondence has reached this Government and the matter rests upon this note of Lord Derby, and your reply.

The reasons given by Lord Derby for the course intimated in his note arise, as he states, from what had taken place in this country in the Lawrence case, and the positive terms of section three, subsection two, of the British extradition act of 1870.

Moreover, it has been stated that the Home Office had even gone further, and expressed the opinion that not only had some implied understanding been reached as to the

particular crime for which Lawrence should be tried, but that it would be in violation of the law of the United States, and of the general laws of extradition of all countries, to try any prisoner for any other crime than the particular extradition offense for which he had been surrendered.

With regard to any such understanding, either expressed or implied by any authorized declaration or engagement of this Government, no evidence is adduced, none can be adduced. This Government asked the surrender of Lawrence, precisely as it has asked the surrender of all other fugitives who have been delivered by Great Britain under the treaty of 1842, complying on its part with the requirements of the treaty; and neither by expression, nor by implication, entering into any "arrangement"; but simply requiring the fugitive to be "delivered up to justice." It furnished such evidence of criminality, as according to the laws of Great Britain where the fugitive was found, would have justified his apprehension and commitment for trial, if the crime or offense had been there committed.

Great Britain recognized the compliance by this Government with all that the treaty required, and delivered the fugitive up to justice.

The allusion made by the Home Office to the case of Lawrence needs possibly a passing remark. Charles L. Lawrence is charged with a series of forgeries whereby the Government of the United States claims to have been defrauded to an amount not far short of two millions of dollars, on custom house entries. He is supposed to have numerous and influential confederates, both in this country and in England, who are suspected of having shared in the spoils resulting from these alleged frauds upon this Government. A large number of indictments have been found against Lawrence, and proceedings either civil or criminal are either pending or imminent against supposed accomplices. It is supposed that prosecution of these cases might possibly disclose names on either side of the Atlantic, in connection with the alleged frauds, not yet brought before the public.

In the spring of 1875 Lawrence fled and escaped to Europe, and was arrested under the assumed name of Gordon, at Queenstown, on a requisition for his surrender under the treaty. There were proved (as I am informed) before Sir Thomas Henry, in London, twelve or thirteen distinct charges of forgery, each on papers connected with a different invoice of goods. The representatives of this Government supposed the extradition was made on all the charges: but the letter or report of Sir Thomas Henry to

the British Home Office, led to the issue of a warrant of surrender of Lawrence on a single charge of forging a bond and affidavit, on which warrant the keeper of the jail delivered Lawrence to the agent appointed by the President to receive him, the terms of the warrant were not known to any agent or officer of this Government (as is represented to me) until long after Lawrence's return to the United States. His counsel and friends appear to have been apprised of the fact, that although proof was presented on some twelve or thirteen charges of forgery, the warrant of surrender seems to be confined to the forging a bond and affidavit. Up to this date Lawrence has been arraigned only upon one indictment based on the forgery of the bond and affidavit mentioned in Sir Thomas Henry's report to the Home Office, and he has not been arraigned for any offense other than the extradition crimes, proved by the facts in evidence before Sir Thomas Henry, and on which his surrender was based.

Although not arraigned on any other indictment than for the forgery for which he was extradited, the British Home Office has raised the question that he may possibly be tried upon other charges, and for other crimes.

It seems therefore that the Home Office of Great Britain undertakes to decide what is the law of the United States, as well as of Great Britain, and assumes that the law of the United States as well as general law of extradition and the extradition act of Great Britain prevent the trial of a criminal, surrendered under the treaty of 1842, for any offense other than the particular offense for which he was extradited, and the position which it takes, involves the assumption, that in demanding an extradition under the treaty, the United States is bound by the provisions of the act of 1870, whether in conflict with the treaty or not, and it claims to have "supposed" that an "effective arrangement was in force," that no criminal so surrendered should be tried for any other than the particular extradition offense; on the faith of which arrangement it is claimed that surrenders have heretofore been made, and without which it is now said that a surrender would not be possible under the English act; but as already said nothing is adduced in support of the belief of the existence of such supposed arrangement.

These positions are so different from the understanding of this Government, and so opposed to the views which it was supposed were entertained by Great Britain, and which have been recorded in Parliamentary papers;—which have been asserted in diplomatic correspondence, and

been recognized in judicial decisions in that as in this country, and set forth by writers on extradition law, that I learn from Lord Derby's note with surprise, equal to my regret, that they appear to be supported by the Foreign Office.

The act of August 12, 1848, reproduced in the Revised Statutes (section 5270 to 5276) referred to in the correspondence, does not affect or limit the rights of the two governments on the question. This act is simply a general act for carrying into effect treaties of extradition. It provides the machinery, and prescribes the general mode of procedure, but does not assume to determine the rights of the United States, or of any other State, which are governed wholly by the particular provisions of the several treaties; nor to limit or construe any particular treaty.

In some few treaties between the United States and foreign countries, provisions exist that the criminal shall not be tried for offenses committed prior to extradition, other than the extradition crime, and in others no such provision is included.

Again, under some treaties, the citizens or subjects of the contracting powers are reciprocally exempt from being surrendered, while others contain no such exception. The United States act of 1848 is equally applicable to all these differing treaties. If the surrendered fugitive is to find immunity from trial, for other than the offense named in the warrant of extradition, he must find such immunity guaranteed to him by the terms of the treaty, not in the act of Congress. The treaties which contain the immunity from trial for other offenses have been celebrated since the date of the act of 1848. At that date the United States had treaties of extradition only with Great Britain and with France, neither of which contained the limitation referred to.

The terms of the respective treaties alone define or can limit the rights of the contracting parties.

The construction of the treaty between the United States and Great Britain, by the two governments, and their practice in its enforcement for many years were in entire harmony. In each country surrendered fugitives have been tried for other offenses than those for which they had been delivered; the rule having been that where the criminal was reclaimed in good faith, and the proceeding was not an excuse or pretense to bring him within the jurisdiction of the court, it was no violation of the treaty, or of good faith, to proceed against him on other charges, than the particular one on which he had been surrendered. The judicial decisions of both countries affirm this rule. It was

so held in a case of inter-State extradition by Judge Nelson in Williams vs. Bacon 10 Wendell 636, and the same principle was laid down by the Court of Appeals of New York in a late case of Adriance vs. Lagrave who had been delivered up under the treaty with France. In United States vs. Caldwell (8 Blatchford Circ. Ct. Rep. 131) Caldwell after extradition from Canada for forgery in 1871, was indicted for bribing an officer; and the plea was entered that the prisoner was brought within the jurisdiction of the court upon a charge of forgery, under the treaty, and that the offense specified in the indictment was not mentioned in the treaty. A demurrer being interposed the court decided the prisoner had been extradited in good faith, charged with the commission of a crime, and must be tried.

In the case of Burley extradited from Canada on a charge of robbery, the prisoner was tried on assault with intent to kill.

In the case of Hielbron, who was extradited from this country for forgery, and tried in Great Britain for larceny, the facts as stated by the Solicitor General of Great Britain, who had charge of the proceedings, and who was examined before the late British Commission on the extradition question, were, that the prisoner being extradited for forgery, was acquitted, and was thereupon tried and convicted for larceny, an offense for which he could not have been surrendered, not being enumerated in the list of crimes mentioned in the treaty.

In Canada there is the same current of authority.

In the case of von Earnam, Upper Canada Reports, 4 C. P. 288, the prisoner was surrendered by the United States to Canada upon the charge of forgery and application was made for release on bail, on the ground that the offense was at most the obtaining of money under false pretenses and not within the treaty. Macauley, C. J., said in denying the motion, that he was disposed to regard the offense as forgery, but even if the offense were only false pretenses, after "being in custody, he is liable to be prosecuted for any offense which the facts may support."

In Paxton's case, 10 Lower Canada Jurist, 212, 11, 352 the prisoner was charged with uttering a forged promissory note. He pleaded that he had been extradited upon the charge of forgery, and could not be tried for uttering forged paper, or for any other than the extradition offense. The court decided that the trial should proceed. The prisoner thereupon protested against being called upon to plead to any other charge, than that for which he was

extradited, but he was tried, found guilty, and the conviction affirmed on appeal.

In addition to the foregoing, Judge Benedict in his opinion in Lawrence's case, delivered within a few days past, entirely coincides in these views, and the Solicitor General of the United States in his opinion in Lawrence's case, dated July 16, 1875, reaches the same conclusions.

An examination of the report of the Select Committee on Extradition of the House of Commons, which sat in 1868, under whose superintendence the extradition law of 1870 was framed, and which was composed of some of the most distinguished public men of Great Britain, among whom were the Solicitor General, Mr. Mill, Mr. Forster, Sir Robert Collier, and Mr. Bouverie, shows, that the law of the United States, and the practice in regard to extradition, were perfectly well understood, and they are distinctly referred to on several occasions.

Mr. Hammond, now Lord Hammond, for many years Under Secretary of State, in speaking of Burley's case, stated, that as it was suggested that the prisoner who had been surrendered on a charge of robbery, was about to be tried for piracy, the matter had been referred to the Law Officers of the Crown, and that it was held that if the United States put him bona fide on his trial for the offense for which he was extradited, it would be difficult to question their right to try him for piracy, or any other offense of which he might be accused, whether such offense was or was not a ground of extradition, or even within the treaty; and added "we admit in this country that if a man is bona fide tried for an offense for which he was given up, there is nothing to prevent his being subsequently tried for another offense, either antecedently committed or not." (answer 1036.)

Mr. Mullens, an eminent member of the bar, who was counsel in the Lawrence case, in reply to a question of Sir Robert Collier, said that in his opinion a surrendered criminal ought to be tried for an offense, other than the extradition offense arising from the same facts; and Mr. Forster (question 1214) considering the propriety of the proposed stipulation, that a person should be tried for no offense other than the extradition offense said: "The Americans do not make that stipulation, or else you would not have been able to try Hielbron for another offense"? To which Mr. Mullens responded: "No; there is no stipulation of that kind in the case of America."

Mr. Mill thereupon said (question 1216) "as I understand it, the treaty with America would not prevent our

trying a man for a different offense from that for which he had been given up"? to which Mr. Mullens replied: "It would not; there is no stipulation that he shall not be tried for any other offense," then follows question 1217. "Would you wish to extend that state of things to other countries?" and the reply "with regard to America I have never found any difficulty about it," &c.

So far as can be ascertained there was absolutely no dissent at any time from these views as to the law and practice under the treaty, and the only question seemed to be whether it was wise to attempt to change them.

Mr. Clarke (an eminent British authority) in his Treatise on Extradition, says, "It is quite clear that neither the treaty nor the law of the United States, contains the provisions of the extradition act of 1870." It would appear therefore by the judicial decisions, by the practice of both governments, and by the understanding of the persons most familiar with proceedings in such cases, and the most competent to judge, that where a criminal has been in good faith extradited for an offense within the treaty, there is no agreement express or implied that he may not also be tried for another offense, of which he is charged, although not an extradition offense. He is in fact (in accordance with the language of the treaty) "delivered up to justice"; and in the absence of any limitation by treaty, to "justice" generally; each independent State being the judge of its own administration of justice. Surely Great Britain will not allow the legislature of another State to prescribe, or to limit the cases, or the manner in which justice is to be administered in her courts, and she will not expect the United States to be less tenacious of its independence in this regard.

Now, for the first time since the signing of the treaty of 1842, Great Britain raises the question of her right to demand from the United States, as a condition of the execution by Great Britain of her engagement to surrender a fugitive criminal charged with a series of stupendous forgeries, a stipulation or agreement, not provided for in the treaty, but asked on the ground that an act of Parliament passed some twenty-eight years after the treaty had been in force, prescribes it as one of the rules or conditions which should apply to arrangements for extradition, when made with a foreign State.

This involves the question whether one of the parties to a treaty can change and alter its terms, or construction, or attach new conditions to its execution, without the assent of the other. Whether an act of the Parliament of

Great Britain passed in the year 1870, can change the spirit or terms of a treaty with the United States of nearly thirty years anterior date, or can attach a new condition to be demanded of the United States before compliance by Her Majesty's Government with the terms of the treaty as they have been shown to have been uniformly understood, and executed by both governments, for the third of a century.

As this Government does not recognize any efficacy in a British statute to alter, or modify, or to attach new conditions to the executory parts of a previously existing treaty between the United States and Great Britain, I do not feel called upon to examine particularly the provision of the law of 1870. But inasmuch as Great Britain seeks to impose the provisions of that act upon the United States in the execution of a treaty of many years anterior date, I do not fail to observe that while by the act Great Britain assumes to require that no surrendered fugitive shall be tried in the country, which demands his extradition for "any offense other than the extradition crime," (in the singular) proved by the facts on which the surrender is grounded, she reserves to herself the right to try a fugitive surrendered to her for such crimes (in the plural) as may be proved by the facts on which the surrender is grounded.

This does not seem to be wholly reciprocal, and if the United States were disposed to enter into a treaty under this act, it might expect some greater equality of right, than a cursory examination of this provision in the act seems to provide.

It is quite well known that after the passage of the act of 1870 an effort was made to enter into a treaty with Great Britain, which should enlarge the number of extradition offenses, and otherwise extend the provisions of the existing treaty.

At the outset it was apparent that the act of 1870 was not an act to carry into effect treaties or conventions for extradition, as is the United States act of 1848, but one providing a system to which all subsequent treaties of extradition must be adapted, and which could be applied to enforce treaties or arrangements made subject to its provisions.

This Government was unable to agree to any arrangement based on the provisions of the act of 1870, and in a note addressed to Sir Edward Thornton, the British Minister, under date of January 27, 1871, he was informed, that, "This Government understands the twenty-seventh

section of the extradition act of 1870 as giving continued effect to the existing engagements for the surrender of criminals. Imperfect as they are, in view of the long coterminous frontier between British North America and the United States, we must be content to suffer the inconvenience, until Parliament shall put it in the power of Her Majesty's Government to propose a more comprehensive and acceptable arrangement."

The British Government was thus distinctly and formally advised of the position, and of the views of the United States, and no exception thereto has been expressed.

A further effort to effect a treaty was made in 1873, after the passage by the British Parliament of an act amending the act of 1870, which resulted in failure for precisely similar reasons.

This failure to negotiate a new treaty arose solely, because the United States could not accept as part of it some of the provisions of the act of 1870, and preferred to go on under the treaty of 1842 as theretofore construed, and practically carried into effect by each Government; and thus we have proceeded up to the present time.

In support of the construction which this Government in 1871, in the note to Sir Edward Thornton above referred to, gave to the twenty-seventh section of the extradition act, it appears that when the Court of Queen's Bench was called to pass upon the very question in the case of Bouvier, 27 Law Times N. L. 844, the Attorney General stated that the intention had been to make a general act, which should apply to all cases except where there was anything inconsistent with the treaties referred to. So far as the point was passed on, the Lord Chief Justice expressed the opinion that it was the intention while getting rid of the statutes by which the former treaties were carried out, at the same time to save those treaties in their full integrity and force, and that the result had been accomplished. One of the other Justices thought the question somewhat doubtful, and the third agreed with the Chief Justice.

The Solicitor General of the United States in his opinion in Lawrence's case, given in August of last year, reached the same conclusion, that the treaty was not affected by the act.

It cannot readily be believed that Parliament intended by the act of 1870 to claim the right to alter treaties in existence without notice to the other government, or to impose new conditions upon foreign governments seeking extraditions under treaties in existence prior to that act.

The United States has declined to become subject to the British act of 1870, and with knowledge of this the Government of Great Britain has continued constantly to ask and obtain extraditions, under the treaty of 1842, and since the refusal of the United States to negotiate a new treaty under the provisions of that act.

Since the passage of the act of 1870, Great Britain has obtained from this Government some thirteen warrants of extradition, and has instituted a much larger number of proceedings to obtain extradition. In no instance has Great Britain thought it necessary to tender any such stipulation, as she now asks from the United States, or to present her requests for extradition in any way different from that in which they were presented prior to 1870. The United States in the same time have instituted numerous proceedings, and at this moment have three criminals in London in custody upon charges of forgery, whose extradition this Government is seeking in the usual manner provided by the treaty.

During this period no intimation has reached this Government that the treaty of 1842 was not in full force, or that the act of 1870 was claimed to limit its operation, or to impose upon this Government the necessity either of changing its laws, or of giving stipulations not known to the provisions of the treaty, and not heretofore suggested, nor has any representation been made to this Government, by that of Great Britain, on account of any proceedings taken in the case of Lawrence, mentioned in the opinion attributed to the Home Office, in the note of Lord Derby to General Schenck, before referred to.

But now, with three important cases pending in London, at the present time for extradition, in one of which at least all the formalities have been complied with, we are informed in substance that it had been supposed up to the present time by the British Home Office that our law as to trials for other than extradition offences was in agreement with the law of 1870, but finding it to be otherwise, we are confronted with the requirement of a stipulation in order to obtain what is guaranteed by the treaty of 1842, whereby the United States must recognize the right of the British Parliament, by statute, to change existing executory treaties, and to impose upon this Government conditions and stipulations to which it had not given its assent.

As relates to the particular case of the fugitive Winslow there is not, as far as I am aware, any intention of trying him for any offenses, other than those, on which indictments were transmitted, and for which his surrender

was demanded, but the United States will give no stipulation of which the treaty does not authorize the demand.

As the stipulation or condition is demanded by Great Britain as a right, the right of the demand must be established.

The President regrets that a condition which in his judgment is without any justification under the treaty, should have been asked. He regards the question thus presented as of a grave and serious character, on the final solution of which must probably depend the continuance of the extradition article of the treaty of 1842. He cannot recognize the right of any other power to change at its pleasure, and without the assent of the United States, the terms and conditions of an executory agreement, in a treaty solemnly ratified between the United States and that power. He thinks that the twenty-seventh section of the British act of 1870 was specially intended to exempt the treaty with the United States from the application of any of the new conditions or provisions embodied in that act, and to leave that treaty to be construed, and the surrender of fugitives thereunder to be made as had been previously done. He hopes that on a further consideration Her Majesty's Government will see, in the section referred to, the effect which he supposes it was designed to have. But he recognizes that it is for the British Government to construe and enforce its own statutes: and should Her Majesty's Government finally conclude, that the British Parliament has attached a new condition to the compliance by that Government of its engagement with the United States, under the tenth article of the treaty of 1842, relating to extradition, requiring from the United States stipulations not provided for or contemplated in the treaty, he will deeply regret the necessity which will thereby be imposed upon him, and does not see how he can avoid regarding the refusal by Great Britain to adhere to the provisions of the treaty as they have been reciprocally understood and construed from its date to the present time, or the exaction by that Government of a condition heretofore unknown, as the infraction and termination of that provision of the treaty.

You are not authorized to enter into any stipulation or understanding as to the trial of Winslow, in case he be delivered up to justice. His surrender is asked under and in accordance with the provisions of the tenth article of the treaty between the United States and Great Britain of the 9th of August, 1842. He is charged with a crime included within the list of crimes enumerated in the treaty—that

crime was committed within the jurisdiction of the United States, and he has sought an asylum and been found within the territories of Great Britain, and the United States have produced such evidence of his criminality, as according to the laws of Great Britain, would justify his apprehension and commitment for trial if the crime or offense had been committed in Great Britain.

You will communicate the substance of this to Lord Derby and should he desire it you may read it to him.

I am, Sir, your obedient servant,

HAMILTON FISH.

May 5, 1876

Memo re miscellaneous papers relating to negotiations between U. S. and Great Britain on subject of extradition.

Miscellaneous papers relating to Negotiations between the United States and Great Britain on the subject of Extradition.

No. 1. Statement of the general character of the papers and notes on the question.

No. 2. Memoranda from Mr. Fish's diary of substance of various entries commencing in October 1870, and ending in September, 1874.

No. 3. Memorandum as to negotiation for a new treaty of Extradition, taken from official correspondence.

No. 4. Draft of Treaty of Extradition submitted by Great Britain in March, 1871.

No. 5. Amendments proposed to British draft of Extradition Treaty, by the Department of State.

No. 6. Further amendments proposed to British draft of Extradition Treaty. (Press copy)

No. 7. British draft of Extradition Treaty altered according to Memorandum of Amendments of Mr. Fish and Mr. Peschime Smith.

No. 8. Notes by the Bureau of Claims, Dept. of State, on proposed Extradition Treaty, submitted by Great Brit. March 1871.

No. 9. Memorandum of a conversation with Sir Edward Thornton January 18, 1873.

No. 10. United States Draft of a Treaty of Extradition (printed) March 1872.

No. 11. Short note by Mr. Fish relative to expense of the arrest of a criminal.

No. 12. Memorandum of Amendments proposed by Judges Edmunds and Thurman to Extradition Treaty.

No. 13. Memorandum of Amendments proposed by Senators Howe and Conkling, to Extradition Treaty.

No. 14. Memorandum of Amendments proposed by Senators Casserly and Bayard, to Extradition Treaty.

No. 15. Mr. Fish's copy: showing the Amendments in the New British Draft of March 1873: also the Amendments proposed by Senators Edmunds, Thurman, Conkling, Howe, Bayard, Casserley, corrected to April 14, 1873.

No. 16. Secretary's draft of Article II, of Extradition Treaty.

No. 17. Conference Draft of Treaty, with Amendments which were assented to, by Sir Edward Thornton and Mr. Fish, at an interview held on June 9, 1873.

No. 18. Draft of Treaty of Extradition submitted by Great Britain in October 1873.

No. 19. Amendments to foregoing draft, proposed by the Examiner of Claims of the Department of State, and by Mr. Fish.

No. 20. Amended draft to the Extradition Treaty of Great Britain of October 1873, proposed by the Bureau of Claims, Dept. of State.

No. 21. Counter-Draft proposed by United States, January 19, 1874.

No. 22. Draft of Extradition Treaty, proposed March 1874, with notes by Mr. Fish.

No. 23. Memorandum of objections and of proposed changes to the draft of an Extradition Treaty between the U. S. and G. B. submitted by Sir Edward Thornton, and bearing date "March 1874."

No. 24. A Bill intituled "An Act for amending the Foreign Jurisdiction Acts (38 and 39 Vict.)

No. 25. Foreign Jurisdiction Bill. Amendment by House of Commons.

The attempt to negotiate an Extradition treaty after the passage of the act of 1870 by Great Britain, and after the amendatory act of 1873, occupied a long time. The

formal notes on the question are scattered through the record books from 1870, ending with a note from Sir Edward Thornton June 11, 1874.

The personal negotiations are noted in various minutes of conferences had between Mr. Fish and the British Minister and are contained in notes made at the time by Mr. Fish, which are embodied in the memorandum which follows. It seems necessary for reference, and especially for any future use which may be made of this negotiation, which although abortive, was long and laborious, to collect all the papers in permanent form.

The loose papers not a part of the files are here collected and a memorandum is added containing the substance of the entries in Mr. Fish's Journal on the question, as well as an abstract of the correspondence appearing in the volumes of notes.

It will be seen that there were several draught treaties prepared from time to time and a particular interview or particular correspondence must be taken with reference to the appropriate draught.

JOHN L. CADWALADER.

May 5, 1876.

Despatch No. 887 from Fish to Hoffman
Dated May 22, 1876

No. 887. Department of State,
Washington, May 22, 1876.

Wickham Hoffman, Esquire
&c &c &c

Sir:

Your No. 79, under date of May 6, enclosing a copy of a note addressed to you by Lord Derby, in relation to the extradition of Winslow, bearing date May 4, reached me late on the 17th instant.

This note of Lord Derby's on its face is a reply to a note from you to him, wherein you communicated the general purport of an instruction addressed by me to you under date of the 31st of March last, but on the 29th of April last you had given to Lord Derby a copy of the instruction of 31st of March. His Lordship's note of the 4th of May is therefore taken as a reply to that instruction, although it contains allusion to some expressions in your note which were not there in pursuance of your instruction.

If Her Majesty's Government had simply persisted in a refusal to deliver Winslow and the other criminals now

in custody awaiting extradition, for the reasons heretofore given, it would have been unnecessary to prolong discussion, inasmuch as the distinct and definite refusal of this Government to give any assurance or stipulation not called for by the treaty, or to admit the right of Great Britain to exact from the United States stipulations foreign to the treaty, as a condition of the performance by Great Britain of her obligations, had already been communicated to Lord Derby.

But as the note in question assumes to give the grounds on which the refusal to surrender the criminals is based, and in large measure seems to change those previously assumed, and as the United States cannot assent to the accuracy of many of the statements made, or to the inferences drawn therefrom, it seems necessary that some reply should be made.

In my instruction of the 31st of March last reference was made in detail to numerous cases decided in the courts, and to evidence from various sources, alike British and American, including the testimony of British officials best versed in Extradition Law, the opinion of British Crown Lawyers, the published decisions of British Courts, and British writers upon Extradition Law, that where a criminal was in good faith demanded for one offence, within the treaty, and surrendered, therefore, there was no agreement, understanding, nor practice that he might not be placed on trial for another offence, with which he was charged, in addition to the Extradition crime. Lord Derby does not explain, modify or deny that this whole current of authority is to this effect, but meets the point with the assertion that "there is no case within the knowledge of this" (the British) "Government in which a prisoner was surrendered by England for one offence, and tried by the United States for a different one," and states that the case of Heilbronn was a "private prosecution," and that no evidence can be found of the attention of the Government having been called to it. In a subsequent passage he again speaks of "private prosecutions" to which the attention of the Government has not been called. I am at a loss to appreciate the application of the term "private" to the prosecution of a felony in the name and behalf of the State or Sovereign. If however it means no more than what is claimed when it is said that the attention of the Government had not been called to a particular case, the question arises as to that jealous protection of individual and personal rights which is the just pride of British, as it is of United States laws, and which constitutes so large a

part of Lord Derby's note. The alleged criminal in whose behalf the State has exercised its sovereign power, whom it has seized and brought from a distant land under solemn treaty obligations, is especially entitled to be looked after by the State, and be protected in such rights as belong even to the criminal.

If Lord Derby's theory that the prohibition of the trial of a surrendered fugitive, for other than the specific crime for which he had been delivered, be correct, either as a recognized principle of the general or international law of Extradition (if there be any such agreement between nations on the subject of extradition, as to form what can be regarded as "international law") or as implied in the treaty of 1842, then a surrendered fugitive is, under such international law, (if such it be) or under such treaty, placed in the hands of the receiving Government with the highest obligations of honor, of justice and of international faith to protect that fugitive from any other prosecution than such as that Government claims that he is liable to. The fugitive is surrendered to the Government in its political capacity, and if he be subjected to any prosecution against which he has a right to immunity, the Government, into whose especial charge and guardianship he has been surrendered for a specific purpose, violates its faith and neglects its duty, both to the individual surrendered and to the State which surrendered him. On the theory advanced by his Lordship the surrendered fugitive must look to the State in its political character—what Lord Derby calls "the Government" for his protection and that power, call it State or Government, cannot escape its responsibility by the plea of ignorance, and that its attention had not been called to the case.

Heilbronn was a fugitive criminal demanded by Great Britain under the treaty of 1842, on the charge of forgery, and was accordingly delivered up by the United States to British justice. He was tried for forgery before a British Court and acquitted—and was thereupon indicted and tried for a public offence not named in the request or warrant of extradition, and one not included in the treaty, and he was thereof convicted.

If under British jurisprudence no public prosecutor is provided to enforce her law against criminals surrendered on a demand made upon a foreign state, and the duties of a prosecutor are discharged by an individual, not technically a servant of the Crown, but permitted to assume that office, can the Government of Great Britain claim or expect that the regular proceedings in her courts

can be disavowed by the political branch of the Government, as not having been brought to its attention, or that such proceedings form no element in determining what has been the practice of the two governments under the treaty?

Heilbronn's case was not referred to as an exceptional one, but as one of the numerous instances, all tending to prove the unbroken practice and understanding of the two governments. In addition to Heilbronn's and the other cases heretofore referred to by me, there are other and recent decisions of distinguished British judges directly upon the point, and in full harmony with the views maintained by the United States.

Mr. Justice Ramsay in the case of Israel Rosenbaum in the Supreme Court of Canada in 1874, when the discharge of the prisoner was claimed because there was no prohibition under the laws of the United States against the trial of criminals for offences other than those for which they were extradited as was required by the Act of 1870, says:

"If it were recognized as a principle of international law that a prisoner extradited could only be tried for the crime for which the extradition took place, it would not have been necessary for the Imperial Parliament to make these provisions" (alluding to the provisions of the Act of 1870) and adds "I am not, however, aware that it has been laid down in England, that a man once within the jurisdiction of English Courts, could set up the form of his arrest, or the mode by which he came into custody as a reason for his discharge when accused of crime," and the same was substantially held in the case of Worms extradited from Canada within the last few weeks.

It is not the province of any government to make inquiry into the extent of knowledge which the political department of another government may have as to the practice or the administration of justice in its Courts in reference to extradition, but I have alluded in prior instructions to the uniform practice without dissent or objection, in both countries under the treaty of 1842, and have shown that it was common in both countries, and that it was held by high judicial decisions in both, that a prisoner extradited in good faith for an extradition crime, might also be tried for another crime.

Lord Derby in his note again refers to the provisions of the act of Congress of August 12, 1848, as showing that persons delivered up could not be tried for any offences other than those for which they were surrendered, although

in my former instruction I stated that the U. S. District Court and the Solicitor General acting in the place of the Attorney General, has each separately decided precisely the opposite. The construction of the municipal laws of a state, pertain to that state, and not to other Governments.

In the United States a treaty duly ratified and exchanged is the supreme law of the land, and its provisions are binding without legislation.

It becomes convenient, however, from time to time to enact laws to regulate the general course of proceedings arising under one or a variety of treaties, but such legislation is purely internal and municipal.

The act of 1848 recognizes the fundamental doctrine that the surrender of a fugitive criminal is a political act of the Government, and the function of the Court or Magistrate is only to determine whether a case has been made out in accordance with the Treaty or the statute enacted in aid of its enforcement. It neither adds to nor detracts from the obligations created by the Treaty, and is not essential to the execution by the United States of its engagements under the various Extradition Treaties into which this Government has entered but affords a convenient and satisfactory aid in the administration of those obligations.

When the United States by the XXVIIth Section of the treaty of 1794, in much the same language as the present treaty, engaged to deliver up fugitives, no act whatever was passed, but fugitive criminals nevertheless were given up on the demand of Great Britain under that provision of the treaty. In like manner when the Xth Article of the treaty of 1842, went into effect no statute was needed but six years thereafter (in 1848) the act in question was passed as being thought advisable to provide machinery to carry out all treaties providing for extradition, not only with Great Britain but with all Governments with which the United States had and might have treaties, no matter what may be their particular provisions. Of these treaties, some, as I have said contain restrictions as to the crimes for which a criminal may be tried by the state demanding him, and others are silent on the question, but the act applies to all.

Lord Derby in his note to you contends that the British Extradition Act of 1870, imposed no new condition upon the treaty of 1842, but in his note of April 13, he refers to the condition "which Her Majesty's Government are compelled to require under section 3, subsection 2 of the Act of 1870."

When it is proposed to engraft, whether by implication, or by Act of Parliament, upon an existing Treaty, a provision not expressly contained therein, I may be permitted to look in to the debates in the British Parliament in 1866 when it was proposed to amend a Bill to carry into effect the Treaty with France by requiring a stipulation similar in its purport to that now asked of the United States, and there find that His Lordship, at the time Lord Stanley, and then, as now Her Majesty's Secretary of State for Foreign Affairs opposed the amendment saying that "in a case like this international courtesy demanded that the treaty should not be materially altered, without communication with the other party." In the same debate Lord Cairns, then Attorney General and now Lord Chancellor, said that the bargain was made between the sovereigns and the amendment "proposed to introduce a new ingredient into the bargain which did not exist at the time the bargain was made. It might have been unreasonable that this new ingredient had not been introduced at the beginning, but to introduce it now was simply to break the bargain which the sovereigns had made and Parliament had ratified—it was to infringe upon treaty engagements, and that without notice to the other side" and further and in particular reference to the latter part of the amendment, quite similar to the provisions of the Act of 1870, now under discussion, he said, "to put such words into an Act of Parliament, which did not exist in the treaty, would only be offering a gratuitous insult to the foreign power to whom it applied, without securing any real advantage." The amendment was withdrawn.

The treaty between Great Britain and France, which was the subject of that debate, was like that between Great Britain and the United States of 1842, silent as to an inhibition of the prosecution of a surrendered fugitive for other than the specific offence for which he was given up. The proposition in Parliament thus sternly and honestly denounced and defeated as "discourteous," as "breaking a bargain," as "infringing upon treaty engagements," as "a gratuitous insult to a foreign power," and as "securing no real advantage," is nevertheless what it is now claimed has been done by virtue of the Act of 1870, with regard to the United States.

Her Majesty's Court of Queen's Bench in Bouviers case, and more recently the Courts in Canada have substantially held the same high doctrine which the eminent statesmen whom I have cited not long since announced in their places in Parliament. Neither international law nor

international courtesy have changed the principles on which they were then recognized as resting.

The United States adheres to the position announced in my former instruction, that it will recognize no power to alter or attach conditions to the executory parts of an existing treaty to which it is a party without its previous assent.

Lord Derby seems to imagine some want of reconciliation between the views of the United States upon this extradition question, and those asserted in its behalf on the rights of political asylum, and asks what is to prevent the United States from obtaining a prisoner on one charge and trying him for a political offence. The answer is ready. The inherent inborn love of freedom, both of thought and of action engraved in the hearts of the people of this country so deeply that no law can reach and no administration would dare to violate.

A large proportion of those who sought refuge on our shores prior to the formation of this government, sought this country for the enjoyment of freedom of opinion on political and religious subjects, and their descendents have not forgotten the value of an asylum, nor the obligation of a State to shelter and protect political refugees. Neither the Extradition clause in the Treaty of 1794, nor in that of 1842, contains any reference to immunity for political offences or to the protection of asylum to political or religious refugees. The public sentiment of both countries made it unnecessary. Between the United States and Great Britain, it was not supposed on either side, that guarantees were required of each other, against a thing inherently impossible, any more than by the laws of Solon, was a punishment deemed necessary against the crime of parricide which was beyond the possibility of contemplation.

That a sentiment stronger than written law, has been sufficient to prevent any attempt to infringe on this right it is but necessary to recall the political events occurring in England, in Ireland and in the United States since the Treaty of 1842 has been in force—the attempted and the actual rebellions which have been witnessed, and the consequent exodus of parties engaged, and yet not a demand by either Government upon the other for the surrender of a fugitive for a political offence. In this respect, what has been must continue to be.

Careful as this Government has been, and will be to maintain the right of asylum for political and religious refugees, it is mindful of the duty to its own citizens and to society at large devolving upon a state to visit punish-

ment upon offenders against the laws, a duty in no way antagonistic to the preservation of the right of asylum.

The rights of society and the duties of the State in the punishment of criminals should not be narrowed and unduly restricted, upon the vague suggestion or fear that at some time, some political criminal may be placed in jeopardy.

The duty of Government to protect its own citizens and punish crime, is equally a duty with that of affording hospitality and shelter to political offenders from abroad.

The Government of the United States sees no reason why either should be sacrificed to the other, any more than why all criminals should escape, for fear some political offender may suffer.

His Lordship believes that the only test and safeguard for the liberty of the individual and the maintenance of the right of asylum are to be found in the principle for which he contends, that the crime or crimes of which a man is accused in the country surrendering, and for which he is surrendered, are the only crimes for which he ought to be tried in the country claiming. Differing with his Lordship I think that the liberty of the individual and the right of asylum would be equally guarded (independently of any reliance on common principles, and on the good faith of both nations) by a treaty, providing that a surrendered criminal shall be tried for none other than one of the several crimes enumerated in the treaty, and for which each Government is willing to surrender. The fugitive would thus be effectually protected against trial for a political offence, justice would be more effectually administered, and crime be allowed less chance of escape.

The United States would not object to such limitation in any treaty which it may be called upon to negotiate with a Foreign State. But with the limitation proposed by Lord Derby it is possible that if a criminal be surrendered on a charge of murder and if the evidence developed on the trial establish only manslaughter, and he might consequently escape—or if one be charged with assault with intent to kill, and after the issuing of the requisition or of the warrant, the victim dies—it is doubted whether in this case under the common Law of England, which obtains also in most of the United States, the fugitive could be convicted of assault, and not having been surrendered for murder, the doctrine contended for would protect him from trial on such charge.

I should not here again advert particularly to the British Act of 1870, but that Lord Derby's note seems to in-

vite some examination of its provisions, and that he alludes to the abortive efforts made since its enactment, to negotiate a new treaty of extradition between the United States and Great Britain, and as he seems to claim under its provisions.

In 1870, Great Britain had three treaties of extradition with France, Denmark and the United States.

Owing to difficulties presented by British law the treaty with France had been, at least between 1843 and 1866, practically a dead letter, the treaty with Denmark had (as has been represented) rarely been resorted to if at all.

The English practice as to extradition had been with the United States, under the treaty of 1842—what that practice had been I have shown.

Great Britain at this time determined to establish a system of extradition, applicable to all governments, for her convenience, and in order to save the difficulty which had been experienced in obtaining the assent of Parliament, or in providing the means of carrying out a treaty; and in substance proposed to define under what limitations and conditions extradition ought to be and might be had.

It was her right to propose a system and to invite foreign States to accede to her views and make treaties thereunder. The general system, however, was anomalous. It applied the same restrictions to a christian or a non christian state, and left no opportunity to suit a particular treaty to the particular demands of two governments. Soon after the passage of the Act of 1870, a proposition was made to the United States to make a treaty thereunder, and after some examination the proposition was declined.

In 1873 an amendatory Act was passed, and further application being made, a negotiation was inaugurated.

Difficulties were experienced at the outset, and at every stage, growing out of the system which had been adopted and the inflexible character of the provisions of the Act. Various drafts were from time to time prepared at the British Foreign Office; and discussed, with an effort to reach an agreement. In these drafts it was proposed that a criminal should not be tried for any offence committed prior to his surrender, other than the particular offence on account of which his surrender was made; and while an effort was made to extend the right to try a criminal to any of the extradition crimes named in the treaty, and to any higher crime than that for which he was surrendered, the effort was abandoned because the United States was informed that under the Act a provision was inadmissible by which an offender surrendered for one offence named in

the schedule, could be tried for any other than the extradition crime. The negotiation was continued, however, until June, 1874, when the United States reached the conclusion that a treaty could not be negotiated under the act.

That this Government ever reached or expressed the opinion that this act was the embodiment of what was the general opinion of all countries on the subject of extradition, is far from correct.

On the contrary, the United States was and is of the opinion, that as the provisions in a treaty placing limits on the right of a foreign State to try extradition criminals are chiefly inserted to protect political refugees, it amounts to a surrender of criminal justice to that principle to limit the right to a trial for the single particular crime named in the warrant of extradition, but that a proper limitation might be made by providing that the criminal shall be tried for no political offense, and for no crime not an extradition crime.

Such is understood to be the provision in almost all the French treaties negotiated with European powers; such was substantially the provision in the treaty negotiated between Great Britain and France, in 1852, and such is the express provision inserted in the treaty negotiated between the British island of Malta and Italy in 1863, and approved in Great Britain.

From the earliest period this Government has had occasion to consider the questions arising under extradition law; the articles of confederation having extradition provisions, as has the Constitution of the United States, governing the question between the States of the Union; and while the United States do not profess to lay down rules of international law on this question, this Government does not consider it now for the first time, nor has its jurisprudence been silent in developing the system. In the negotiation referred to, the attention of the Government of the United States was directed to the proposed treaty more than to the act, looking to its provisions as binding on the government of Great Britain, entirely irrespective of the act in question.

But many of the provisions of the act did not, and do not, seem to be reciprocal, and appear to furnish excuses for a failure to perform an obligation imposed by a treaty made thereunder, or a shelter for a responsibility which naturally belonged to the government.

In view of the position assumed by Great Britain during this controversy, by which treaty provisions are practically made subservient to acts of Parliament, the dif-

ficulty and want of reciprocity in making any treaty thereunder becomes more apparent.

It is not my intention to attempt to critically examine this British statute, but it will not be inappropriate to refer to some of these provisions.

Her Majesty's Government reserves to itself the right by Section II, after an arrangement has been made with a Foreign State, by the order in council applying the act, or by any subsequent order to "limit the operation of the order," to restrict the same, and to "render the operation thereof subject to such conditions, exceptions, and qualifications as may be deemed expedient."

Again Section II, subdivision one, provides that a fugitive criminal shall not be surrendered for a political offense, "or, if he prove to the satisfaction of the police magistrate, or the court before whom he is brought on habeas corpus, or to the Secretary of State, that the requisition for his surrender has in fact been made with a view to try or punish him for an offense of a political character." In substance, therefore, the criminal may take two appeals from the decision of a police magistrate on this question, and, provided he succeeds on any application, he may be discharged, but no provision is made for an examination of the question in any quarter, should the police magistrate decide in favor of the criminal. In such event a question, which is purely one for the Government to deal with, is remitted to a police magistrate, and should he improperly decide, the government is sheltered by a quasi judicial decision, and this of an officer not necessarily of a high grade.

Again, Section II, subsection three, provides that a fugitive criminal shall not be surrendered unless provision is made by law in the foreign state, or by arrangement, that he shall not, until he has had an opportunity of returning to be tried "for any offense committed prior to his surrender, other than the extradition crime, proved by the facts on which the surrender is grounded."

It will be seen the word crime is carefully used, in the singular, and, as Lord Derby states in his note, this Government was informed in 1870 that any provision would be inadmissible by which a prisoner surrendered for one offense could be tried for any "other than the extradition crime for which he was surrendered."

But when the corresponding provision limiting Great Britain to trials is examined (section 19,) it is provided that a criminal so surrendered "shall not be triable, or tried, for any offense committed prior to the surrender in any

part of Her Majesty's dominions, other *than such of the said crimes as may be* proved by the facts in which the surrender is grounded."

The want of reciprocity of these provisions is quite clear, inviting frequent questions and differences.

To make one further remark as to this act, the latter part of section 7 provides that if the Secretary of State is of opinion that an offense is one of a political character, he may refuse an order for a warrant of apprehension, and that he may "at any time order a fugitive criminal, accused or convicted of such offense, to be discharged from custody."

In the draughts of treaties prepared and submitted to this Government, under this act, no such corresponding authority to discharge criminals in custody was proposed to be given to the United States, nor does the act seem to contemplate a reciprocal right to other powers.

I repeat that this act does not concern the United States, except in so far as it is put forward to limit our treaty rights, and I have been drawn into any consideration of its system, or particular provisions, only, from the language of Lord Derby, that it was the embodiment of the general opinion of all countries on the subject of extradition.

Moreover, if the United States had been willing to negotiate a new treaty, which should contain certain restrictions as to trials not included in the existing treaty, and give certain advantages not known thereto, such readiness could not justify Great Britain, after the negotiation had failed, in withholding all the advantages and in seeking to ingraft upon the old treaty such of the rejected provisions as she might select; particularly so when the act of Parliament of 1843 (6 and 7 Vict., ch. 57) was by its provisions to continue as long as the treaty; and the twenty-seventh section of the act of 1870, exempted the treaty with the United States from the clauses which were foreign to its terms; and when the United States, soon after the passage of the act of 1870, and on January 27, 1871, had informed Her Majesty's Government that this Government understood the twenty-seventh section of the act of 1870 as giving continued effect to the existing engagements for the surrender of criminals, to which no dissent was at any time or in any form or manner expressed. In fact, the understanding of the United States on this question was not only not dissented from, but has been sustained by the supreme court of Canada in Worms' case in 1876, and in Rosenbaum's case in 1874, where the court states: "I can-

not see how a new provision of the act of 1870 could be consistent with the treaties with France, the United States, and Denmark;" and by the conclusion, so far as a conclusion was reached, by the Court of Queen's Bench in the case of Bouvier, in 1872, to which I have heretofore referred, where the lord chief justice says that, although he hesitates to express an opinion, he plainly sees that it was intended, while getting rid of the statutes by which the treaties were confirmed, to save the existing treaties in their full integrity and force, and that, had it been necessary to decide that point, he would have been prepared to do so.

Having examined that case with care, as to what was there decided, I read with surprise Lord Derby's statement that the point decided was that, under the provisions of the French Treaty, unless it had been proved to the court that the French law had provided that Bouvier could not be tried for any other offense than that for which he was surrendered, Bouvier could not have been delivered up, and I am quite satisfied that a perusal of the case itself will tend to a very different conclusion.

Lord Derby makes reference to certain correspondence between an official of the home office and the solicitors of Lawrence soon after his surrender, and before any representation had been made to this Government. This correspondence assumed in a few words to prejudge and dispose of the whole question, and to state what was the law of this country, and the general law of extradition of all countries, in reference to the trial of surrendered fugitives. It was unknown to and unauthorized by this Government, and founded on the representation and the argument of the criminal. It appeared in the public prints, and was used by the counsel and friends of Lawrence in the United States to prejudge the question and create difficulty between the two governments; and I deeply regret the necessity which requires me to question the reference to ex-parte representations made by the paid solicitors of a criminal to an official of a foreign power, in the discussion of a grave question involving the rights and impugning the conduct of a friendly state, and jeoparding the maintenance of a treaty of long standing and of beneficial operation.

Lord Derby also quotes a letter of instruction addressed by the Attorney-General of the United States to the district attorney at New York in reference to the trial of Lawrence, whose case in the whole correspondence seems to have overshadowed that of Winslow, which alone is the subject of the present requisition made by the United States upon Her Majesty's government, and his Lordship

inquires as to the power of the Attorney-General over prosecutions instituted against extradited criminals.

The letter in question was addressed by the head of the Department of Justice to one of his subordinate officers, in reference to the conduct of a case under his charge. The Attorney-General directs that "Lawrence must first be tried upon the charge upon which he was extradited, and upon no other, until that trial is ended." This letter of instruction, passing from a superior to a subordinate officer, was not, and was not intended to be, an exposition of the views of the Government upon any general proposition, but a specific instruction in a particular case; and whether or not he had ever examined the opinion of the late distinguished Under-Secretary of State for foreign affairs of Her Majesty's Government, he seems to have been guided by the same appreciation of treaty rights and of international law which led Lord Hammond, in his examination before the special committee of the House of Commons, to say, "We admit in this country that if a man is bona fide tried for an offense for which he was given up, there is nothing to prevent his being subsequently tried for another offense, either antecedently committed or not."

In reply to the question of Lord Derby as to the power of the Attorney-General over prosecutions, it will be borne in mind that in the United States an offense may be against Federal laws, or against the laws of one of the States. The Attorney-General has power to control all criminal prosecution for offenses against the Government pending in the Federal courts, but no power whatever to interfere directly or indirectly in any State prosecution. The President has, in like manner, power to pardon criminals convicted, and to direct the suspension or dismissal of criminal prosecutions in the Federal courts, but none to pardon those tried and convicted in the State courts, or to control the proceedings of these courts.

Criminals of both classes come under the extradition treaty. It happens that Lawrence is charged with crimes against the Government, and Winslow and the other forgers with crimes against State laws.

Neither the President, nor any officer of the Federal Government, has power to control or to dismiss the prosecution in Winslow's case, or in any case where the offense is against the laws of one of the States, and could not give any stipulation or make any arrangement whatever as to the offenses for which he should be tried when returned to the justice of the State against whose laws he may have offended.

But, as I have before stated, a treaty, duly ratified and proclaimed, is in the United States the supreme law of the land, and if the extradition treaty did, as it does not, provide that no criminal could be tried for any other than certain particular offenses, such a provision would be binding upon all courts, both State and Federal.

The absence of any such provision from the treaty between the United States and Great Britain leaves to the State Courts the extent of jurisdiction over returned criminals, which has been so repeatedly referred to as recognized by the judicial decisions of the courts of both countries.

His Lordship refers to the "late case of Blair, who was" (as his Lordship mildly expresses it) "inveigled by a British subject, with the assistance of American officers from the United States, and tried at Liverpool for fraudulent bankruptcy, and sentenced to imprisonment." He was promptly released by the British government, which sent him back to the United States, paying his expenses back to the place whence he had been brought. This prompt and generously just conduct of Her Majesty's government is duly recognized and appreciated by the United States.

The abduction was, however, regarded by this Government as a case of kidnapping; but the power so promptly and efficiently exercised by the British government is an evidence of the inherent power existing in the political department of that government, when it sees fit to exercise it, over the person of the individual, and in control even of the judgment of the courts. Could not the power thus summarily exercised in an act of comity, and in consideration of a wrong committed in a distant jurisdiction, be also exercised in the performance of a treaty obligation, and in aid of the administration of justice, without being hampered by the technicalities of a municipal act? Whether Blair personally desired to be returned to the United States is not known, nor is it supposed to be of any consequence. He was deported and sent out of Her Majesty's jurisdiction by the political authorities of the government without process of law, but merely upon the representation of the United States of the circumstances attending his abduction or inveiglement.

His Lordship speaks of having been "assured of the intention of the United States Government to try Lawrence for other than the extradition crime for which he was surrendered." Her Majesty's government has never been thus assured, and for the very good reason that the Government of the United States has never reached any such conclu-

sion, and has neither expressed nor formed any such intention. It does, however, hold to the opinion that, if thus inclined, it has the power and the right, after having tried him on the charge on which he was surrendered, (although he may have been surrendered on only one of twelve or more charges of which the proofs were furnished) with a bona-fide intent and effort to convict him on that one charge, to try him for others of the many offenses of which he has been guilty. It does not conceal, but avows, its belief in this right. And hereupon Lord Derby advances the startling declaration, which I repeat in his own words: "They" (Her Majesty's Government) "have always regarded the claim so to try him as a breach of the treaty of 1842."

If Her Majesty's Government seriously advance this as indicating a mode whereby, in their judgment, a treaty may be broken, it is as novel as it may prove to be far-reaching. It is simply the proposition that the assertion by one party to a treaty of a claim, or of a construction of the instrument not admitted by the other, and without any act in derogation of the convention or of the rights of the other party, constitutes of itself a breach of the treaty.

I note this assertion, not with a view to discussion, but in the hope that so dangerous a doctrine may prove to have been unguardedly advanced, and may not be left unexplained or unavowed to justify future action (from whatever quarter) upon its broad statement, under which treaties and conventions become worthless.

While it may not be necessary to repeat the position of the United States, it is proper to say that the United States has simply demanded the performance by Great Britain of her treaty obligation to deliver fugitives under the treaty of 1842, as the same has been in operation for more than thirty years, and insists that no British statute can attach a condition to the treaty foreign to its terms.

If any proceedings in the United States, in the case of any criminal, have given rise to question or complaint, this Government is prepared to hear and properly dispose of any such complaint.

But while the treaty shall be in force, the Government of the United States would be strangely forgetful of the dignity and rights of the country if a foreign state were permitted to exact stipulations or engagements pursuant to her law, but foreign to the treaty, as a condition of obtaining the performance of treaty obligations.

It will be a cause of great regret that a treaty which has worked so long and so beneficially should be termi-

nated on such a ground; but the decision of this question is for the authorities of Great Britain. The United States has in due form, and after complying with every requirement of the treaty, demanded the surrender of Winslow, and the other criminals in London, and it is for Her Majesty's government to decide whether Great Britain will or will not perform her treaty obligations.

You will read this instruction to Lord Derby, and in case he desires it, you will furnish him with a copy.

I am, Sir,

Your obedient servant,

HAMILTON FISH.

Note from Fish to Thornton dated May 27, 1876, enclosing memorandum of conversation

Department of State,
Washington, 27th May, 1876.

The R. H. Sir Edward Thornton, K. C. B.
&c. &c.

My dear Sir Edward:

I enclose for your perusal and for any suggestions or alterations which you may deem proper to make, a copy of a memorandum of our conversation of to day.

Very truly yours

HAMILTON FISH.

MEMORANDUM

of a conversation between Sir Edward Thornton and Mr. Fish, at the Department of State, Saturday May 27, 1876.

(Foreign Relation 76)

Sir Edward Thornton read a telegram from Lord Derby, stating in substance that Mr. Hoffman, the United States Chargé in London, had suggested to him that an additional article to the treaty of 1842 might be negotiated, and he (Lord Derby) thereupon proposed that an article similar to the 3rd Article of the project of a treaty which was under consideration between Sir Edward and Mr. Fish in June, 1873, which proposed to restrict the trial of a surrendered fugitive to that for the specific crime for which

he may have been surrendered, and to which article, he said, Mr. Fish had proposed an amendment prescribing the time within which the fugitive might be at large after trial or discharge, before he could be arrested for trial on another offense, and during which he should be at liberty to return to the country by which he had been surrendered. That if this proposal be accepted by the United States he (Lord Derby) would sign the new article in London with Mr. Hoffman, or Sir Edward Thornton would be authorized to sign it here with Mr. Fish.

Mr. Fish, in reply, expressed regret and surprise that Mr. Hoffman should have made any suggestion on the subject, and assured Sir Edward Thornton that Mr. Hoffman had no authority from his Government to make or to entertain any such proposition or suggestion, but that he was strictly limited to the conveyance of specific instructions from his Government so far as relates to any question affecting the construction of the extradition treaty between the two Governments and Mr. Fish requested Sir Edward Thornton to assure Lord Derby to this effect. Mr. Fish added that he endeavors to give Mr. Hoffman instructions on that particular question which should be read to Lord Derby, and not to leave anything for oral representation or oral discussion in order to avoid the possibility of any misapprehension, from telegrams or other cause.

With regard to the proposition for negotiating an additional article to the treaty of 1842, he remarked that although he might have been willing in the negotiation of 1873 to have inserted the article now proposed, in a treaty which gave to the United States the improvements which it desired in the treaty of 1842 of a larger list of extradition crimes and other advantages, it could not be expected that the United States would now accept the limitations and restrictions upon what it holds to be its rights under the treaty without obtaining any of the advantages for which such limitation might have been accepted.

That the United States is extremely anxious to reach a satisfactory settlement of the difficulties which have been interposed in the execution of the treaty, but that the proposed article would impose upon the United States the limitation which it denies to exist under the treaty and would secure no one advantage, which it desired, and no improvement upon the treaty of 1842.

And further that in view of the argument which has been advanced by the British Government of the controlling force of the act of Parliament over all treaties or arrangements for extradition made by Her Majesty's

Government subsequent to its enactment it might be claimed, and possibly not without some force, that an article in amendment or additional to the treaty of 1842, would bring that treaty under the operation and control of the act, which this Government denies to be the case, and cannot consent to. It would be admitting away one of the grounds on which the United States stands.

He referred to what he considered defective features in the British Act of 1870, which he thought made it unequal in its provisions as to the British and to the foreign governments, and as wanting in reciprocal powers and rights.

He further said that he thought it unwise to attempt to patch up the treaty of 1842—that the present would not be a propitious moment for such efforts, and that whenever anything is attempted in the way of altering that treaty, it would require a more general revision and especially an enlargement of the list of extradition crimes.

Mr. Fish added that the United States would not object in any negotiation to be hereafter entered upon, that a treaty should provide to the effect that a surrendered criminal shall not be tried for any crime or crimes other than such as are of the class enumerated in the treaty as extradition crimes nor be tried for any political offense.

In this connection he referred to the treaty negotiated in 1852 between Great Britain and France (signed by Lord Malmesbury and Count Walewski) which contained a provision to that general effect.

And upon Sir Edward Thornton observing that the Act of 1870 would prevent the British Government from agreeing to such a stipulation, Mr. Fish asked whether Her Majesty's Government could not obtain from Parliament a special enabling or ratifying act for the particular treaty which might be negotiated between the two countries.

Mr. Fish further said that with such provision in a treaty, and with the similarity of feeling of the two governments and of their people on the question of political asylum, a full protection would be secured against the trial of a surrendered fugitive for any political offense; and that the violation of such provision by either of these two governments was not within the reach of contemplation but should it occur it would lead to the denunciation of the treaty, by the surrendering State, which would also be at liberty to hold the offending State to its responsibilities for violating a treaty engagement, the treaty would be broken by an act in violation of its terms; whereas if the State on which the demand for surrender is made, decide

that such demand, being made, (as it must be) for one of the extradition offenses is really designed to bring the fugitive to trial for a political offense, and refuses surrender on that ground it would be an imputation upon the good faith of the request, and upon the integrity of the demanding State, which would justly give rise to resentful feelings, and would equally lead to a denunciation of the treaty by the State whose requisition has been refused, and whose honor and integrity has been questioned and in this case the treaty would fail, not for an act done, but for the questioning of the good faith of one of the parties.

HAMILTON FISH.

Telegram Fish to Hoffman dated May 27, 1876

[Foreign Relations 76]

Telegram Washington, May 27, 1876.

Hoffman—

Chargé—London.

Your telegram received. Thornton has read to me one from Lord Derby stating that you had proposed to him the negotiation of the Additional Article. You will please inform me immediately whether the suggestion proceeded in the first instance from you or from him—and if from him how far you may have encouraged it.

FISH,

Secretary.

Telegram, Fish to Hoffman dated May 28, 1876

[Foreign Relations 76]

Telegram. Washington, May 28, 1876.

Hoffman—

Chargé—London.

Your suggestion was unauthorized and is regretted and disapproved. You are to receive any representations or information on the subject of the treaty or of pending difficulties and report them here but to abstain from discussion or suggestion unless under specific instruction. All negotiation on the Extradition question will be conducted here.

Should Winslow be given up you will perform the appropriate duties, but say nothing to compromit this Government on to further embarrass the general question.

FISH,
Secretary.

Acknowledgment, Fish to Thornton dated May 29, 1876

Department of State,
Washington, May 29, 1876.

The R. H. Sir Edward Thornton, K. C. B.
&c. &c. &c.

My dear Sir Edward:

I enclose for your signature, two copies of the Memorandum of the 27th instant, and request that one of the copies may be returned to the Department.

Very truly Yours

HAMILTON FISH.

Enclosures:

Two copies of Memorandum.

Note from Fish to Thornton dated May 29, 1876

Department of State,
Washington, May 29, 1876

The
R. H. Sir Edward Thornton, K. C. B.
&c. &c. &c.

My dear Sir Edward:

I am in the receipt of your note of this date. In the memorandum which I submitted, of our conversation on Saturday, I made reference to the French treaty because my allusion to it was intended by way of historical reference and in answer to the intimation of Lord Derby that international Law and the General law of Extradition restricted the trial of a surrendered fugitive to the single crime for which he had been delivered up. I did not intend to name the particular language of that treaty, but to say that the United States would be willing in any future negotiation to include a prohibition of the trial of a surrendered

fugitive for any political offence commited prior to the surrender, or for any offence (committed prior to the surrender) not one of the class of offences for which the Treaty may provide that surrender will be made, but leaving the fugitive triable for any or either of the offences thus named.

Your recollection agrees with mine, with regard to the reference to the Act of 1870 and my suggestion of an enabling or ratifying act in case of a new treaty being agreed to.

I think that you have somewhat misapprehended what I may have said as to the surrender for political crime. I intended to limit my expressions to the prohibition of the trial of a surrendered fugitive for a political offence on the idea that with the provision in the Treaty to that effect, should the fugitive be tried for a political offence the surrendering State would be justified in denouncing the Treaty and in holding the other party to its responsibility for a violation of the conventional agreement. Should the State on which the demand is made, be allowed to deny the good faith of the other (and to hold that the fugitive is to be tried for other than the crime for which his surrender is asked, would be a gratuitous imputation on the integrity and honesty of the demand and of the State demanding) it would equally lead to the denouncing of the Treaty, but in this case, the wrong act is committed on the apprehension of what may be, and with the chances largely that such apprehension is groundless, or is the consequence of interested representations or misrepresentations. I had this idea clearly in view during our conversation although I do not remember to have put it in words but I did endeavor to avoid the idea of leaving to the surrendering State the decision of the question whether the offence charged was of a political character.

May I venture to suggest that possibly a few minutes of personal interview (say at one o'clock today) may enable us to put the memorandum in form according to the recollection of both. I go to New York tomorrow.

I am

Very faithfully yours,

HAMILTON FISH.

Despatch from Derby to Thornton dated May 29, 1876.

Mr. Payson

Rec'd from Sir Ed. Thornton June 22.

Foreign Office
May 29, 1876.

The Right Hon'ble
Sir Edward Thornton K.C.B.
&c. &c. &c.

Sir,

I have received your Telegram of the 27th Instant, in which you report that you had communicated to Mr. Fish the substance of my despatch No. 148 of the 26th Instant, which was telegraphed to you on that day and that he begged you to express his extreme regret that a suggestion made by the United States Chargé d'Affaires should have led me to suppose that the United States Government could agree to an additional Article to the Treaty of 1842, but stated that, while they would be glad to make a new and enlarged Treaty, they cannot, under present circumstances, agree to the additional article to the Treaty of 1842, which you were instructed to propose, and which the United States Chargé d'Affaires had not been authorized to suggest.

You reported further that Mr. Fish had expressed doubts whether a new Treaty could be made in accordance with the Act of 1870, and wished to know whether Her Majesty's Government could not agree to a Treaty not in accordance with that act, and then obtain from Parliament an act to enable Her Majesty's Government to carry that particular Treaty into execution. The United States Government, he said, would be glad to stipulate that a surrendered criminal might be tried for the crime for which he was extradited and for any and all the crimes in the Extradition Treaty but for no others, and he added, contrary to what he had stated on previous occasions, that the United States would agree simply that no one should be surrendered for a political crime, without any mention of authorities before whom the prisoner might prove that the crime, which he was accused of was of a political nature.

Her Majesty's Government have carefully considered Mr. Fish's observations in connection with those reported in your Despatch No. 119 of the 1st Instant, and they regret exceedingly that he declines to agree to the additional article tendered in my Telegram of the 26th to which he had formerly given his entire assent, and they do so the more, as, if the proposal had been accepted, all difficulty in the way of the surrender of Winslow and the other extradition

prisoners now in custody in England would have been removed.

With reference to Mr. Fish's suggestions as to the provisions with respect to political crimes, which would be accepted by the United States Government, you will state that Her Majesty's Government propose, with a view of meeting his views on this point, the following clause in respect to Political Offences:—

"A fugitive criminal shall not be surrendered if the offence in respect of which his surrender is demanded is one of a political character, or if he prove that the requisition for his surrender has in fact been made with a view to try or punish him for an offence of a political character."

With regard to Mr. Fish's remarks as to the difference between the wording of subsection 2, section 3 of the Act of 1870, and Section 19 of the same act reported in your Despatch No. 119 of the 1st Instant, I have to observe that the wording of the two sections above mentioned has been treated by Her Majesty's Government in all their Extradition Treaties as identical, and they have never claimed to make any distinction in the mode in which an Extradition prisoner was to be dealt with, whether surrendered by a foreign Government to England, or vice versa. As the course to be pursued by each country is so defined in all Treaties, the difference, which practically consists in the word crime being in the singular in subsection 2 clause 3, and in the plural in section 19, is immaterial, and has no operation upon the wording or working of the Treaties.

The real object of both clauses is that a prisoner should not be tried upon a different state of facts from those proved in the surrendering country. The remedy for such a difficulty as was suggested by Mr. Fish respecting murder and manslaughter is very simple, namely, that care should be taken by those who represent the country applying for extradition, that all the crimes which could be proved by the facts laid before the surrendering authority should be included in the demand for extradition, as was done in the case of Winslow, when a supplemental demand was made that the crime of uttering should be added to that of forgery in the application for his surrender.

But Her Majesty's Government cannot hold out any hope that after the full consideration which the subject of extradition received in the inquiry of 1868, the report of the Committee who sat upon it, and the well considered action of Parliament in embodying the recommendations of the Committee in the Act of 1870, it would be possible

for the Government to ask Parliament to conclude a Treaty with the United States not in accordance with that Act, or to give them powers to agree that with respect to that particular Treaty, it might be stipulated that a surrendered criminal might be tried for the extradition crime on which he was surrendered, and also for any and all the crimes in the Treaty, though such crimes were proved by a totally different set of facts than those proved against him in the Country surrendering, e.g. that a man charged and surrendered in England for forgery should be tried in the United States for murder. This would be inconsistent not only with the report of the Committee of 1868, but with all the Treaties which have been entered into with foreign states and have worked to the mutual satisfaction of those states and of this Country.

Her Majesty's Government had hoped that, as no objection was raised by Mr. Fish to the 3rd Article in the revised Draft Treaty formerly discussed between the two Governments, they were at least of full accord with one another on this point; and they can only repeat their extreme regret that a fresh obstacle is now raised to the settlement of a new Extradition Treaty with the United States, at the time when they believed that only one subject of difference existed between the two Governments, namely, that of wording the clause relating to political offences, the objections to which on the part of Mr. Fish will it is hoped be removed by the tender of the clause now sent, in which the words objected to by him are omitted, and each Country is left free to follow the mode of procedure which its own laws prescribe.

You will read and give a copy of this Despatch to Mr. Fish and will express to him the earnest hope of Her Majesty's Government that he will reconsider his present objection to Article 3 of the Revised Draft Treaty which he did not raise at the time when the Draft was under consideration in 1871, and by doing so enable a new Treaty to be signed at once.

I have telegraphed to you the substance of this Despatch.

I am,

&c., &c., &c.,

(Signed) DERBY.

Note from Thornton to Fish,
dated May 29, 1876

(Department of State Received May 29 1876)

Dip/K Ack 29 May Wm. Payson

The Honorable
Hamilton Fish,
&c., &c., &c.

British Legation, Washington,
May 29, 1876.

My dear Mr. Fish,

I am much obliged to you for the Memorandum you have sent me of our conversation of Saturday with regard to extradition. As far as it goes, I think it is a correct statement of what occurred; but there were one or two other observations which you made and which I shall report to my Government with pleasure, because I think that in the first place they will more plainly show the desire of the United States Government to conclude a new Treaty, and secondly they may help to influence mine in that direction.

In mentioning that the United States Govt. would wish to stipulate that a surrendered criminal might be tried for any and all the crimes enumerated in the Treaty but for no others, you alluded to the Treaty between Great Britain and France of 1852, and added that the United States would have no objection to an agreement similar to the one contained in that Treaty with regard to that point.

Upon my observing that the Act of 1870 would prevent us from agreeing to such a stipulation, you asked whether H. M's. Govt. could not obtain from Parliament a special enabling Act for the particular Treaty which might be regulated between us.

With regard to political crimes, I understood you to say that the United States would be satisfied with a general stipulation that no surrender should be made for a political crime, without specifying any particular Authority as being entitled to decide upon the nature of the crime.

Believe me,

Very truly yours,

EDW'D. THORNTON.

Note from Thornton to Fish
dated May 30 1876

(Department of State Received May 31 1876)

BRITISH LEGATION,
WASHINGTON.

May 30, 1876.

The Hon'ble Hamilton Fish
&c. &c. &c.

My dear Mr. Fish,

Allow me to return to you the enclosed Memorandum of our conversation on Saturday last, which, as you will see, I have signed in accordance with your request.

Believe me,

Very truly yours,

EDW'D THORNTON.

Acknowledgment, Cadwalader to Thornton
dated June 1, 1876

Department of State,
Washington, June 1, 1876.

The
R. H. Sir Edward Thornton, K. C. B.
&c. &c. &c.

My dear Sir Edward:

In the absence of Mr. Fish, I have to acknowledge the receipt of the Memorandum of your conversation with him on Saturday last, and to thank you for your signature attached thereto.

Believe me,

Very truly yours,

JOHN L. CADWALADER.

Dispatch No. 6 from Fish to Pierrepont, dated June 21, 1876.

A. B. No. 6.

Department of State,
Washington, 21 June, 1876.

Edwards Pierrepont, Esquire
&c. &c. &c.

Sir:

You are somewhat familiar with the question which has lately arisen between the United States and Great Britain, growing out of the failure of the authorities of Great Britain to surrender Ezra D. Winslow, and other fugitives from justice whose extradition had been duly demanded by the United States, pursuant to the X Article of the treaty of 1842.

The general correspondence on the question was transmitted to the House of Representatives on the 10th instant, pursuant to a call from that body, and will be found in Executive Document No. 173, House of Representatives, 1st Session, 44th Congress, a copy of which is herewith transmitted.

An examination of the records of the Legation at London will inform you of any correspondence not included therein.

It is understood that Her Majesty's government has also laid before Parliament certain correspondence on the question, of which no copy has as yet reached me, but which will doubtless be found at the Legation in London.

Since the transmission of the correspondence above referred to, to Congress, two of the criminals who have formed the subject thereof, have been discharged in London, Winslow having been released upon the 15th and Brent upon the 19th instant, respectively.

Thereupon, and upon the 20th instant, the President transmitted to Congress a message upon the question, a copy of which is enclosed herewith.

You will perceive that after stating the general facts disclosed by the correspondence and the failure of the government of Great Britain to surrender the fugitives, and their discharge, the President expresses the opinion that the course adopted by the government of Great Britain, if adhered to, cannot but be regarded as the abrogation of the Xth Article of the treaty of 1842, providing for extradition and that it will not comport with the dignity or self respect of this government, under these circumstances, to make further demands or to entertain further requisitions under the treaty.

The President while submitting to Congress the general subject, and whether by legislative enactment, this article of the treaty should be declared to be no longer obligatory or as no longer forming a part of the supreme law of the land, states, that with the present attitude of the government of Great Britain unchanged he shall not take any action either in making or in granting requisitions for surrender of fugitive criminals under the treaty, in the absence of any expression of the will of Congress on the question.

Congress has as yet taken no action on the subject.

It is believed that these papers, with the records of the Legation, will fully inform you as to the position of this government, and as to the entire question.

You will perceive that upon the 26th of May, Mr. Hoffman in conversation with Lord Tenterden, the under Secretary of State, made some suggestion as to an amendment of the treaty, which was immediately taken advantage of by the Foreign Office, and a proposition made to attach to the present treaty an article taken from a draught under discussion in 1873, which in substance would have conceded by treaty the claim which Great Britain has put forward under the Act of 1870.

This suggestion of Mr. Hoffman was unauthorized and disapproved, and it was deemed necessary to promptly convey the views of the United States on this point to the British government, as you will see by a memorandum of a conversation between the British Minister and myself, appearing at page 44, of the Executive Document, House of Representatives, No. 173.

Should any suggestion be made to you in London on this point, you will hold out no hope or expectation that the position or views of the United States as to this proposition, will be changed.

The whole subject of extradition has been carefully and laboriously considered here in connection with these late questions under discussion with Great Britain, as well as in a long negotiation conducted here in 1871 and 1873, in the effort made to negotiate a treaty under the Act of 1870, as amended in 1873, but which was finally abandoned.

For these reasons it is deemed better, as stated to Mr. Hoffman in my telegram of the 28th of May, that any negotiations which may be necessary in reference to the existing questions or which may arise in the future, should be conducted here.

You will, therefore, report any representations or information which may reach you, but be careful not to com-

mit this government to any course, without specific instructions.

Pursuant to the terms of the message of the President of the 20th of June, and in the present attitude of Great Britain, no demands will be made by the United States upon Great Britain, and no requisitions will be entertained by this government under the X Article of the treaty of 1842, and in case inquiry is made of you upon this point you will refer to the conclusions of the President expressed in his message.

You will keep me advised as to any facts or circumstances which may reach you throwing light on the question, and especially of anything which may be said to you upon the subject—obtaining all the information you can, without expressing any opinion beyond what has been above authorized, and without manifesting any apparent inquisitiveness on the subject.

In case anything shall arise changing the conclusions which have been reached, or having any bearing on the question, you shall be promptly advised thereof.

I am, Sir,

Your obedient servant,

HAMILTON FISH.

Enclosures:

Executive Document No. 173—House of Representatives—1st Session—44th Congress.

President's Message to Congress—20th June, 1876.

Note from Fish to Thornton dated June 23, 1876 enclosing memorandum of conversation held June 22, 1876.

Department of State,
Washington, June 23, 1876.

The
R. H. Sir Edward Thornton, K. C. B.
&c. &c. &c.

My dear Sir Edward:

I enclose for your examination a memorandum of our conversation of yesterday on the extradition question, and the instructions of Lord Derby of 29th May, of which you left a copy with me.

Will you have the kindness to examine it, and if correct I will have another copy made for signature.

I am, My dear Sir Edward,

Very sincerely yours,

HAMILTON FISH.

MEMORANDUM

of a conversation between Sir Edward Thornton and Mr. Fish at the Department of State Thursday, June 22, 1876. (See p. 186.)

Sir Edward Thornton under instructions from Lord Derby read to Mr. Fish and gave him a copy of a despatch which he stated that he had received last evening by the mail of the Bothnia. It bears date May 29, 1876.

Mr. Fish commented on the delay between the date of the despatch, May 29, and the day of sailing of the Bothnia which was the 10th of June and remarked that a copy of his instruction to Col. Hoffman of the 22d May had been delivered to Lord Derby on the sixth of June and that he learnt it had not been communicated to Parliament with the correspondence laid before that body on the 8th of June.

Sir Edward Thornton thought the delay in the reception of the despatch just read might arise from its being a missing despatch.

Mr. Fish remarked that the despatch seemed simply to propose an amendment to the Treaty of 1842 which he thought was violated and abrogated by the act of Great Britain in refusing to deliver up three fugitives with regard to whom all the requirements of the Treaty had been performed on the part of the United States. That in former conversation he had told Sir Edward Thornton that while Great Britain was refusing to execute the Treaty, it was wholly out of the question for the United States to entertain any proposition to amend or patch it up and inquired whether Sir Edward Thornton had read the message which the President had sent to Congress on Tuesday last, which presented the views and the position of the Government of the United States on the present attitude of the question.

Sir Edward Thornton had read the message and remembered that Mr. Fish had informed him that the United States could entertain no proposition to amend the treaty of 1842 pending the refusal of Great Britain to surrender the criminals now or lately in custody but he could not

admit that Great Britain had violated and abrogated the Treaty.

He explained that part of Lord Derby's despatch which attributed to Mr. Fish the expression of willingness on the part of the United States to agree that no person should be surrendered for a political crime without reference to the authorities who should decide whether the crime be or be not of a political character—this he said arose from a misapprehension on his part of a remark of Mr. Fish in the conversation of the 27th of May which he had immediately communicated to Lord Derby and that he had subsequently when the memorandum of the conversation was prepared, learnt his mistake and had informed Lord Derby that Mr. Fish had not thus represented the United States as thus assenting.

He then alluded to further negotiation on the question of extradition.

Mr. Fish remarked that the despatch just read seemed to contemplate only a single amendment to the Treaty of 1842, which it had already been explained could not be entertained. That since the date of the despatch the fugitives had been released and the practical abrogation of the Treaty had been effected. He enquired whether he was to understand Sir Edward Thornton as proposing to open negotiations for a new Treaty—adding that under the circumstances the United States does not feel disposed to make a proposition for negotiating but must withhold any expression on its part, other than that of regret at the absence of a treaty of Extradition between the two Governments until it be in response to a proposal and request from Great Britain.

Dispatch No. 904, Fish to Hoffman, dated June 23, 1876

B. No. 904.

Department of State,
Washington, 23 June, 1876.

Wickham Hoffman, Esquire,
&c., &c., &c.

Sir:

Upon an examination of the British correspondence on extradition, North America No. 1, 1876, forwarded with your No. 107, I was surprised to find at page 77, (No. 163) a note from yourself to Lord Derby, dated April 26th, informing him of the receipt of a telegram by you from me,

containing the words "has right" which you stated you understood to be an answer to his inquiry whether the District Court had power to try Lawrence for offences other than those mentioned in the warrant of surrender.

A copy of this note has not been transmitted to the Department as should have been done. With your No. 76, you stated that you forward copies of all important correspondence. Copies of all correspondence upon the question under discussion should have been transmitted. (See Printed Personal Instructions to Diplomatic Agents abroad, Section VIII.) This note of April 26, was founded upon an entire misapprehension. Upon April 25th I telegraphed you as follows: "Sixty two received. Has eight sixty four been communicated. Is question disposed of." To which on April 27th, you sent a reply containing the following. "Was communicated Saturday. No answer yet."

Upon a careful examination of the text of the despatch received as forwarded with your No. 72, the two words are made to read "Has right." and are followed by a period; at the same time the writing is indistinct, and as you replied to the despatch by its true reading, I am in doubt how any mistake existed.

As you will therefore see if any doubt still exists concerning it the words "has right" were not used by me, and unless you have done so, you will correct the misapprehension existing, by informing Lord Derby of your error in reading the telegram.

I am, Sir,

Your obedient servant,

HAMILTON FISH.

Dispatch No. 910, Fish to Hoffman
dated July 13, 1876

B No. 910

Department of State,
Washington, July 13, 1876.

Wickham Hoffman, Esquire
&c. &c. &c.

Sir:

I have to acknowledge the receipt of your No. 113, in which, after quoting a passage from instruction 897, to which it is a reply, you ask a renunciation of the disapproval which had been expressed.

You proceed to explain that the conversation referred to with Lord Tenterden had left the case of Winslow, and turned upon the question of a new treaty, and that it was in this connection that you made the suggestion, of which I was compelled to disapprove, and you add that it will be seen therefore that you never proposed to meet the present difficulty, by suggesting an amendment to the treaty of 1842.

The instruction of which you complain, and which imposed upon me a most disagreeable duty, was not written under any misapprehension.

Whether your proposition was made while the conversation related to Winslow's case, or with reference to the future of the question, whether in fact it was intended to adjust the simple case of Winslow, or to adjust the general question which had arisen from that case, could make no substantial difference.

Any proposition at that juncture to amend the treaty of 1842, by the negotiation of such new articles, was in effect a proposition to adjust the then present difficulty, and Lord Derby, in his note to you of May 26, referred to your proposition as a method of meeting the present difficulty, to which at the time no exception appears to have been taken.

I am, Sir, Your obedient servant,

HAMILTON FISH.

Note, Pierrepont to Derby, dated July 16, 1876

Copy

Legation of the United States
London July 16, 1876

My Lord

With reference to the letter of your Lordship dated the 15th instant and today received, relating to the negotiation of an Extradition Treaty, I have the honor to state that until further instructions from my government I do not feel authorized to undertake such negotiation.

I have the honor to be with the highest consideration your most obedient servant,

EDWARDS PIERREPONT.

The Right Honorable
The Earl of Derby.

Dispatch No. 7 from Pierrepont to Fish, dated July 19, 1876

No. 7

Legation of the United States
London July 19th, 1876.

To the
Honorable Hamilton Fish
Secretary of State
Washington, D. C.

Sir:

I have the honor to inform you that yesterday I received a note from Lord Derby asking whether I had received authority from my Government to undertake the negotiation of an extradition Treaty. I herewith send a copy of Lord Derby's note, to which I replied that I was not yet authorized to enter upon such negotiation.

The note was dated the 15th of July but was not received until yesterday. The motion in the House of Lords upon the Extradition question has again been postponed. The next day named is Thursday the 20th.

I have met the present Lord Chancellor and the late Lord Chancellor and several members of Parliament at the different dinners which have been given and much conversation I have heard upon the Extradition question.

It excites a great deal of interest here and I think all who are connected with the Government in any way, and many who are not thus connected, deeply regret that any interruption to the execution of the Treaty of 1842 has occurred.

I believe you are familiar with the case of Burnley. (Burley)

On the 25th of February 1865 Earl Russell in his Dispatch to Mr. Burnley writes as follows:

Earl Russell to Mr. Burnley.

Sir, *Foreign Office, February* 25, 1865.

With reference to the case of Mr. Bennett Burley, who has been given over by the Canadian authorities to the United States' Government under the Extradition Treaty, on a charge of robbery, I transmit to you herewith a copy of a letter from Mr. Dalglish, M. P.,* forwarding, at the request of Mr. Burley's father, a statement relative to his son, from which it would seem that fears are entertained that Bennett Burley will not be tried before the United States' Courts on a charge of theft, but on a charge of

piracy, and Mr. Burley, senior, as a British subject, consequently asks for the good offices of Her Majesty's Government on behalf of his son, in so far as that he may not be tried on any other charge than that on which the claim was made for his extradition.

I have to state to you that, having considered this application in communication with the proper Law Advisers of the Crown, Her Majesty's Government are of opinion that if the United States' Government, having obtained the extradition of Burley on the charge of robbery, do not put him on his trial upon this charge, but upon another, viz., piracy (which if it had been made before the Canadian authorities they might have held not sufficiently established to warrant his extradition), this would be a breach of good faith against which Her Majesty's Government might justly remonstrate. If, however, the United States' Government does *bona fide* put Burley on his trial for the offence in respect of which he was given up, it seems to Her Majesty's Government that it would be difficult to question the right of that Government to put him upon his trial for piracy also, or any other offence which he may be accused of having committed within their territory, whether such offence was or was not a ground of extradition, or even within the Treaty.

Accordingly, Her Majesty's Government can only so far comply with the application of Mr. Burley, senior, as to instruct you to protest against any attempt to change the ground of accusation upon which Burley was surrendered in pursuance of the Treaty.

I am, &c.

(Signed) RUSSELL.

This shows clearly the view which the British Government entertained of the Treaty when Earl Russell wrote the Dispatch, and it is not easy to see how Lord Derby can defend the new position which is now taken. I herewith enclose a copy (of Lord Derby's note to me of the 15th inst. marked No. 1—and a copy of) the correspondence relating to Extradition presented to the House of Commons marked No. 3 and No. 4.

I have the honor to be with great respect,

Your obedient servant

EDWARDS PIERREPONT.

Enclosures:

No. 1 Note from Lord Derby.
No. 3 Correspondence respecting Burley
No. 4 do do do Caldwell
Letter regarding invitations to Centenial

print 8 sheets.

EXTRACTS FROM BRITISH BLUE BOOKS

North American No. 3 & 4
relating to cases of Bennett G. Burley & ~~Richard Baker Caldwell~~

print p. 22. No. 8 Mr. Hammond to Mr. Burley Mch 25
p. 23. No. 12 L'd. Herbert to L'd. F. Brine May 9, 65
p. 29. No. 23 Mr. Hammond to Mr. Burley
p. 31. No. 27 Mr. Eliot to Mr. Hammond Sep 15
p. 32. No. 28 Mr. Hammond to Mr. Eliot
" No. 29 Sir F. Roper to Mr. Burley

Extracts relating to case Rich'd Baker Caldwell

print paper 1. petition
" 4. decree Ct.
" 5. 6. 7. privy council rep & letter May 16

No. 1—accompanying Dispatch No. 7.

Foreign Office.
July 15, 1876.
(Rec'd July 18th)

The Hon'ble Edwards Pierrepont
&c &c &c

Sir:

With reference to the letter I had the honor of addressing to Colonel Hoffman on the 30th Ultimo, I have the honor to renew formally the proposal of Her Majesty's Government to proceed with the negotiation of a new and extended Extradition Treaty. Requesting to be favored with an intimation whether you have received authority from your Government to undertake such negotiation,

I have the honor to be, with the highest consideration, Sir

Your most obedient, humble servant

(Signed) DERBY

Telegram, Pierrepont to Fish, dated July 20, 1876

Ans'd 20th

Mr. Payson

TELEGRAM.

London, July 20th 1876.

Fish, Washington.

No Parliament from twelfth August to February. Late for new treaty. Think can restore old meanwhile. Shall I try?

PIERREPONT.

Telegram, Fish to Pierrepont, dated July 20, 1876

C. Telegram. Washington, July 20th 1876.

Pierrepont

Minister—London.

Communicate by mail your reason for thinking treaty may be restored—but make no proposition or suggestion of any sort or kind on the subject. Confine yourself strictly to receiving suggestions and reporting all that is communicated or that you can learn. Nothing induces change of views as to the place where negotiations must be conducted, as given in your instruction number six and in telegram to Hoffman of May twenty eighth.

FISH,

Secretary.

Telegram, Fish to Pierrepont, dated July 21, 1876

C. Telegram. Washington, July 21, 1876.

Pierrepont,

Minister—London.

Journals report Derby as stating receipt of a communication from this Government in re Extradition. What is it? I know of none of recent date, unless it be a note sent by me to Thornton on eighteenth instant.

FISH,

Secretary.

Dispatch No. 11, Pierrepont to Fish, dated July 21, 1876

No. 11.

Legation of the United States.
London July 21st 1876.

To the Hon'ble Hamilton Fish,
Secretary of State,
Washington, D. C.

Your cable of the 20th July I had the honor to receive at 3 o'clock this morning.— Your former instructions are scrupulously followed to the last syllable.

My reasons for thinking that the Treaty may be restored and continue in operation until a new one can be negotiated, are, that in my intercourse with various members of the Ministry and from listening to their suggestions, while making none myself, it is not only apparent but very certain that if there were any excuse upon which they could seize, they would be glad to have the Treaty carried out as heretofore;—and the excuse upon which I think they would place themselves is, that they have been misinformed about the action of our Government in relation to Lawrence.

In conversation with Lord Derby and Lord Tenterden together Lord Tenterden said that their information was, that Lawrence was still held upon indictments for smuggling and liable to be put upon trial at any time.

The whole drift of the suggestions which I have heard satisfy me that the British Government would like to have the Treaty carried out as it has been heretofore executed until another Treaty can be negotiated — I think (if any excuse could be found,) that Lord Derby would change the ground which he has taken, and that no other excuse would be needed than the finding that he had been mistaken about the facts in the Lawrence case.

I shall propose nothing and commit the Government of the United States to nothing without instructions.— On Monday Lord Granville's motion will come on in the House of Lords.— What effect that will have I cannot say.— It is understood that it will be an attack upon Lord Derby for his handling of the Extradition question.

I think that Lord Derby would have preferred entering upon a negotiation and thus stave off the motion as indicated in my Dispatch No. 7.— I have since told Lord Derby that unless I had new instructions I could not enter upon any negotiations touching the Extradition question and that such negotiations must be carried on in Wash-

ington.— After some further conversation as to convenience &c., Lord Derby said—"Well, just as Mr. Fish chooses!"

You will see by the slip from the "Times" all that Lord Derby said, and that it is not what you supposed from the journals in America.

I have the honor to be with great respect

Your obedient servant

EDWARDS PIERREPONT

LONDON, FRIDAY, JULY 21, 1876.

In the House of Lords yesterday,

Lord DERBY made an appeal to Lord GRANVILLE in reference to the notice on the subject of Extradition, which stood on yesterday's paper of business. He said that within the last few hours he had received a communication which induced him to ask, in the public interest, for a further postponement of the discussion on that subject.

Note, Pierrepont to Derby, dated July 21, 1876

Copy.

Legation of the United States
London July 21, 1876

Dear Lord Derby

Referring to our conversation about the place to conduct the negotiations upon the subject of Extradition and to avoid misunderstanding, I have to say that Mr. Fish desired these negotiations to be conducted at Washington.

I have the honor to be faithfully your Lordship's Ob't Serv't.

EDWARDS PIERREPONT.

Telegram, Pierrepont to Fish, dated July 22, 1876

Mr. Payson

TELEGRAM

London, July 22, 1876.

Fish, Washington.

Feel sure that instructions are strictly followed. Not accurate about Derby.

PIERREPONT.

Recd. July 22, 1876.

Note, Derby to Pierrepont,
dated July 24, 1876

Copy

Foreign Office
July 24, 1876

Sir.

I have the honor to acknowledge the receipt of your note of the 21st instant stating that Mr. Fish wishes the negotiations upon the subject of Extradition to be conducted at Washington.

I have the Honor to be with the highest consideration,

Sir,

Your most obedient
Humble servant

DERBY.

The
Hon'ble Edwards Pierrepont
&c &c &c

Telegram, Pierrepont to Fish,
July 25th, 1876

File Mr. Payson

Telegram.

London, July 25, 1876.

Fish,
Secretary,
Washington.

Derby sent for me; said treaty not abrogated, might arrange to extradite. I referred all to Washington.

Heard long debate in Lords. Able for us, Chancellor against us. See dispatch.

PIERREPONT.

In cipher.

Dispatch No. 14, Pierrepont to Fish, July 25th, 1876.

No. 14.

Legation of the United States
London July 25th, 1876.

To the
Hon'ble Hamilton Fish,
Secretary of State,
Washington, D. C.

Sir:

Yesterday Lord Derby sent for me and said "I do not consider the Treaty abrogated.

Might we not get along with some arrangement about extradition until further negotiation?"—I replied: that, "as everything about the Treaty must be negotiated at Washington, after having verbally said this before, I wrote your Lordship a note the other day to the same effect to avoid any possible misunderstanding."

He said: "Yes, I received it." He then spoke of the debate which would come off in the House of Lords last evening, and remarked that he should undertake to defend the position of the Government.

Everything was said courteously and pleasantly; but I could not fail to be impressed with the belief that Lord Derby desires to make some arrangement by which criminals can be extradited under the old Treaty until a new one can be negotiated—His speech in the House of Lords last night seems to indicate the same.—He fully understands that the negotiation, whatever it is, relating to the old Treaty or to a new, must be carried on in Washington.—I have from the beginning declined to enter upon any negotiation touching the subject;—and Lord Derby understands and accepts the situation.

My belief is that Lord Derby would have preferred a postponement of the debate until something could be done in Washington;—but as I made no suggestion and expressed no opinion, the debate came off.—I attended the debate and send you a full report and also the editorial in the "Time."

I was surprised at the little interest it seemed to excite after the speeches of Lord Granville and Lord Derby.—The statement of the Lord Chancellor about the small number who remained is sufficiently correct; but if he had said nine, instead of twelve, he would have been more accurate.

There seems to be an increasing disposition on the part of the "Times" to sustain Lord Derby, as you will see by reading the editorial, and it is now understood that the

Lord Chancellor is coming to his aid; but the argument is clearly with Lord Granville and I am sure that the general sentiment is on our side, and is fairly reflected by the editorial of the "Daily News" which is also enclosed.

I cannot foretell what the effect of the debate will be.

I shall advise you as I may learn.—I have made no proposition of any kind and shall not unless specifically instructed.

I have the honor to be with great respect,

Your obedient servant,

EDWARDS PIERREPONT.

THE TIMES, TUESDAY, JULY 25, 1876

Lord GRANVILLE did not interfere at all too soon in the Extradition Controversy, which has brought us so inopportunely into a sort of conflict with the Government of the United States. It would have been altogether unsatisfactory if the Session had terminated without some expression of opinion on the part of English Statesmen as to the subject of this dispute. As Lord GRANVILLE, at the opening of his speech last night, declared, Extradition must be regarded as an act of comity in itself, and as an advantage both to the country demanding and the country granting it, while it must, at the same time, be acknowledged that no nation has a "right" to make the demand without a previous arrangement, and that political offences are distinctly excepted from the category of Extradition crimes. The last point was one which this country had guarded with special care, as was shown by the fact that in 1870, when the question became the subject of legislation in this country, England had only three Treaties of Extradition with foreign nations, while France and America had some thirty each. This difference is not at all proof of greater carelessness as to the international pursuit of crime, but it is evidence of our more anxious solicitude to protect political criminals from the vengeance of hostile Governments. Among the Treaties, however, by which we had been bound ourselves was the Ashburton Treaty of 1842, and the controversy which has arisen on this compact with the United States Government turns upon one simple conflict of construction. The Americans argue that when Extradition has once been effected, and the accused person has been surrendered to the Government de-

manding it, the surrendering Government has no further concern with his fate. He may, they assert, be tried for the Extradition crime, or for any other crime upon which the Government that has got the custody of him may choose to indict him. On the other hand, the British Government, in the recent dispute, has contended that a person who has taken refuge in England, and has been surrendered after certain legal proceedings for the purpose of being tried on a specific charge, is only lent, so to speak, to the Government which claims him, for the purposes of that trial;" and if that indictment fails, he reverts to his former privileges of asylum. Such was the doctrine which Lord DERBY last night laid down in the House of Lords; and we do not understand that Lord GRANVILLE upheld substantially a different doctrine. The difference arises when we apply these reasonings to the Treaty of 1842, in which no special provisions were admitted with the object of securing the point on which so much stress is now laid. It may be that thirty-four years ago, the experiences of contracting nations in matters of Extradition were imperfect; or it may be that it was thought unnecessary to take any special securities of this sort in dealing with a country like the United States, which valued so highly personal liberties and the right of political eccentricity. At any rate, no stipulation was inserted in the Treaty of 1842 limiting the right of the country demanding Extradition to deal according to the forms of its law with criminals surrendered under the eleventh Clause. But, according to Lord DERBY, the right to try prisoners so surrendered for any or every crime is contrary to the spirit and intention of the Treaty, contrary to its interpretation hitherto, and contrary to the principles laid down in repeated Parliamentary discussions alike at Westminster and at Washington.

Upon this contention, and not upon the Act of 1870, the refusal of our Government to grant the Extradition of WINSLOW and others in the same case has been founded.

In answer to Lord GRANVILLE last night, Lord DERBY laid stress not so much on any English Statute as on an Act of Congress, upon which, however, Mr. FISH puts a different interpretation. That Act says that the person surrendered from the United States "shall be delivered up to be tried for the crime of which such person shall be so accused." But does not this imply that until the present controversy arose the American Government took the same view as our own of the obligations of Extradition? It was pointed out last night, however, by Lord GRANVILLE and

other Peers on the Opposition Benches that the Law Officers of the CROWN in former years had taken a different view; and it appears, at any rate, that when questions arose upon the point which is now contested, the legal advisers of the Government were of opinion that the principle should not be immediately pressed. Whether, in giving this advice, they inclined to the view that the principle should be altogether abandoned is, at least, a doubtful point, and Lord DERBY is justified in maintaining that it remains unimpaired. In any event the political aspect of the case is not affected by the opinion of the Law Officers of a dozen or half-a-dozen years ago, and, upon the political question, the Act of 1870 is really a conclusive piece of evidence. The doctrines laid down in that Statute, may be criticized in some particulars, but their main lines cannot be altered in the present temper of the English people. There is no need, as Lord DERBY said, to talk claptrap; but the preservation of the right of political asylum is as dear to the citizens of this country as it was nearly twenty years ago, when they overthrew a strong Government and a most popular Minister on the mere suspicion of tampering with it. We do not suppose that the Government of the United States is likely to abuse the right of Extradition in order to oppress its political enemies; but we do not know what the Government of the United States may be ten years hence, nor can we safely trust to a sentiment which may change with a breath of popular passion. What is more, we "cannot have one rule for the United States and another for the rest of the world;" and assuredly in revolutionary times we could not hope to secure the right of Extradition from abuse as an engine of political oppression by the Governments of Europe without some stringent safeguards of the kind now disparaged by the leaders of the Opposition in the House of Lords.

Of course this question of policy is altogether distinct from the question of legal interpretation, on which, if the Government were misled, it is to be censured in the usual way. Lord GRANVILLE and Lord KIMBERLEY express a very strong opinion on this point. They allege that the Government was not authorized to refuse the demands of America for the Extradition of WINSLOW and others, and that, at any rate, it would have been proper to wait until the Americans had violated what we contend to be the law before upsetting a most important international compact. But Lord DERBY, we think, is clearly in the right when he argues that, the difference of interpretation having once become

apparent, the maintenance of the Treaty in its present form became unsatisfactory, and, indeed, impossible. It was obviously better to raise a definite issue at once, and WINSLOW's case gave the occasion. It is now as obviously necessary to prevent this legal dispute from being turned into a shield for criminals, and to this end, we may hope, the Government of the United States will readily agree in what Lord DERBY calls "a provisional arrangement which shall prevent rascals from benefiting by the falling out of honest men." If that arrangement can be carried out, the two Governments will be enabled to approach the grave political questions on which they differ so strongly in a spirit of sober compromise. Possibly we may see the State Department at Washington quickly returning to the mood in which the negotiations for a new Draught Treaty were conducted some time ago. Then, as Lord DERBY reminded the House of Lords last night, an Article was proposed by the British Government embodying the principle now disputed, and the American Government not only accepted the Article, but suggested that it should be strengthened by the insertion of words intended to make its meaning more distinct. This fact is a sufficient proof that the American Government cannot have any objection, on the ground of principle, to a definition of the right of Extradition in the sense and with the object for which Lord DERBY has been contending. If Mr. FISH is only dissatisfied with the manner in which the issue has been raised, he may be contented by Lord GRANVILLE's protest and Lord DERBY's explanations. No offence, it is plain, was intended, and the Americans, of all people in the world, should be the least disposed to take umbrage at a sturdy difference of opinion, especially when the differing party is making a stand for personal and political liberties.

THE DAILY NEWS, TUESDAY, JULY 25,

THE debate on the Extradition question in the House of Lords was brought to a sudden close last night in a manner which every one must regret. The LORD CHANCELLOR had only just begun the speech, to which the House naturally looked as the legal defence of the Government's policy, when he declared that his physical condition rendered it impossible for him to continue, and he had to resume his seat. The House indeed had already seen only too clearly that Lord CAIRNS was far too weak to go on with his speech. Every one was grieved rather than surprised,

when, after a moment's pause, he found himself obliged to withdraw from the House. Under these circumstances, and acting on a suggestion made by the Lord Chancellor himself in the last few hurried words he spoke before resuming his seat, the adjournment of the debate was moved and agreed to. We should, of course, regret in any case the breakdown of a debate caused by the illness of so distinguished and so valued a member of the Government as Lord Cairns. But there is, perhaps, an especial reason why the Government, and, we may add, the country, should feel sorry for last night's collapse. It is desirable in every sense that the Government should be able to make out a decent case for the course of policy they have adopted in regard to this Extradition question. The Government in its dealings with Foreign States represents the English people. No partisan of the Opposition, however eagerly he might wish to see the Ministers embarrassed in our Parliament, could desire to see them placed at any disadvantage when carrying on a controversy or a negotiation with the Government of a foreign country. Therefore every one, we presume, would have been glad if our Ministers could have shown that, whether right or wrong in the conclusions to which they had come in dealing with the question of extradition between England and the United States, they had at least some fair reasons for their view, and could escape the charge of ignorance or inconsistency. The debate of last night did nothing to relieve them from this charge—it is perhaps somewhat of a compliment to call it a debate. The argument was all on one side, and indeed, except for Lord Derby, even the speakers were all on one side. We cannot tell what ingenuity Lord Cairns might have displayed, or what new light he might have thrown over the legal part of the controversy. But in the absence of this new light we can only say that the reasons for the course adopted by the Government remain more obscure than ever. In truth, the public can only be courteously invited to suspend their judgment on the formal ground that the Lord Chancellor was not able to speak, and that had he spoken he might possibly have said something which certainly has not yet been said by any one on behalf of the Government.

Lord Granville's speech was clear, earnest, and able. He had to dispose of two points principally in dealing with what we may call the lately existing Treaty. He had to show that the case set up by the Government was wrong when it relied upon the Act of 1870 to give a new interpretation to the Treaty of 1842, and wrong when it insisted

that the British Government had always maintained the view of the Treaty's bearing lately upheld by Lord DERBY. The FOREIGN SECRETARY himself became willing to give up his reliance on the Act of 1870, although in his correspondence he at one time distinctly appealed to that Act, as the authority by which alone the American Treaty was kept alive. Lord GRANVILLE had an easy task in showing, what indeed its mere statement ought to make obvious, that an Act of Parliament passed in 1870 cannot affect a treaty made some twenty-eight years before, and that in any case an Act of the English Parliament cannot bind the United States. The illustration which Lord GRANVILLE drew from the steps taken by Russia a few years ago with regard to that clause of the Treaty of Paris which restricted her in the Black Sea was very appropriate and effective. Russia had at all events to obtain the assent of the other Powers concerned in it before she could establish a modification of the clause. But the FOREIGN SECRETARY at one time maintained that we had a right to alter by an Act of our own Parliament the effect of a Treaty made long before with a foreign Power. We need not, however, dwell on a contention which Lord DERBY seems now to have completely abandoned. But the other point was made quite as clear. Lord DERBY was mistaken, and very strangely mistaken, when he contended that the position he took up was that invariably maintained by the British Government, Lord DERBY, we need hardly remind our readers, contends, or contended, that when we surrender a criminal to the United States Government on one particular charge he cannot be tried in the States on any additional charge without a new formality of extradition. In defence of that position he appealed first to the Act of 1870 which undoubtedly would justify him if it could apply to all past time and to foreign countries. Falling back, however, from this line of defence, he contended that his view of the Treaty was that which had always been maintained by her MAJESTY'S Government. Here was a question of fact, and on this, as we have more than once shown, and as Lord GRANVILLE showed last night, he was entirely wrong. We have already quoted the statement of Mr.—now Lord—HAMMOND before the Select Committee of 1868. We have already mentioned the instances in which the British Government deliberately acted on an interpretation of the Treaty directly opposed to that which Lord DERBY maintained. Lord GRANVILLE put the matter beyond the possibility of doubt last night. He sometimes even apologised very naturally to the Lords for a seeming waste of time in repeating the evidence of so obvious a fact.

Lord DERBY, however, so far as we could follow his argument, did not seem to understand the bearing of this part of Lord GRANVILLE's speech. He appeared to think it enough to contend that his interpretation was right, and that of his predecessors wrong, and to insist upon the obvious fact that the declarations of a Ministry do not necessarily bind its successors. But it was not a question of the comparative virtue of different interpretations or of the power of one set of Ministers to bind another set. Lord DERBY had justified his view of the Treaty by the allegation that it was the view always upheld by British Governments. Lord DERBY was utterly wrong in his facts, and of course his argument had to go with them. Were he entirely right in his view, and his predecessors perversely wrong, his argument would have gone all the same. Lord GRANVILLE, in the early part of his speech, objected strongly to the kind of argument that because a certain provision would be of great advantage, and ought to be in a Treaty, therefore it must be in the Treaty. But although thus forewarned against such a line of argument, Lord DERBY, as far as we understand him, placidly adopted that and some other fallacies throughout his speech. There was, we think, something in what Lord KIMBERLEY said, that the Government were, in any case, a little too quick in interpreting the claim of the American Government to construe a Treaty in a particular way as a breach of the Treaty. Perhaps, too, we may acknowledge that there is a good deal of sense in Lord GREY's remark that we allowed ourselves to be carried away rather too far by our sensitive, and in itself very creditable, eagerness for the full preservation of our right of asylum. Guided by our dread of having to give up political prisoners, or of being deceived into giving them up, we seem to have acted as if our general duty was to protect all fugitives from foreign justice, and as if only in exceptional cases had we any right to surrender them. There can surely be no real difficulty in the way of our making satisfactory arrangements with the United States and establishing a Treaty better in all respects than the one which has failed. Out of this recent unlucky muddle may come some good. Perhaps last night's debate, imperfect as it was, may help to bring about this end. But as a defence of the Government's action it was a failure. We only hesitate to say that the failure is complete, because we must suppose that the LORD CHANCELLOR has something to say, and he was not allowed to say it last night.

THE TIMES, TUESDAY, JULY 25, 1876.

EXTRADITION.

Earl GRANVILLE, in proceeding to call attention to the correspondence respecting Extradition, said:—The Secretary of State for Foreign Affairs, while asking me last week to postpone my motion for a few days, seemed to agree that the subject of the papers to which I am about to call your attention is one worthy of the notice of Parliament. By the difference between the Governments of this country and of the United States as to the construction of the Treaty of 1842, a position of great inconvenience has been created for both countries. It is a position from which both countries must wish to extricate themselves, and I hope we shall learn this evening that by the delay asked for last week some progress has been made in that direction; but, in any case, I believe that Parliamentary discussion, and possibly Parliamentary action may be useful and requisite; and if it be carried on in the same moderation of tone, with some slight exceptions, as it appears to have been done by both parties in the diplomatic correspondence, no harm can be done. Though writers on International Law have differed as to the obligation of surrendering the fugitive criminals of friendly foreign countries, I believe the result at which all civilized nations have arrived is this—1. That it is an act of comity in itself; 2. That it is an advantage to both countries; 3. That no nation has a right to make this demand without a previous arrangement; and 4. That in no case ought persons to be so surrendered for political offences. No country has been more strenuous in the assertion of the last important principle than Great Britain and the United States. Two questions are involved in the Papers upon which I am about to comment. They are distinct questions, although they have been somewhat mixed up:—1. The execution by Her Majesty's Government of the existing treaty. 2. The negotiations for a new treaty. I will deal in the first instance with the second question, and with regard to it I am not aware that Her Majesty's Government are open to any criticism apart from the difficulties which have arisen out of the refusal to surrender Winslow, and the possibly unnecessary stereotyping of our position in the last despatch. The facts regarding this negotiation for a new treaty are as follows:—In 1870 while France and the United States had each more than 50 Treaties of Extradition with foreign countries, we had only three—viz., with the United States, with France, and with Denmark. This fact was due to a

jealous on our part, which I trust will never be abandoned or weakened, as to the maintenance of the rights of asylum for political offenders. A Committee was appointed in 1868 to consider how best extradition could be combined with the maintenance of the right to which I have just alluded; and founded upon the recommendations of that Committee, a Bill was introduced, which passed in 1870. This Act extended the number of offences for which extradition might be made, facilitated the machinery for the purpose, and at the same time introduced new provisions for securing a person from the danger of being tried for any political offence. I succeeded to the Foreign Office after the passing of that Act, and it was my duty to circulate to our representatives abroad a copy of the Act, and soon afterwards a model draught Treaty. The result was that I was able to conclude treaties with Germany, Italy, Austria, Belgium, and Brazil, and other important countries—a list to which the noble earl has made useful additions. Negotiations on my part immediately began with the United States for a new treaty, and during the last month of my tenure of office information came from Sir E. Thornton that the only obstacle left was the objection of the United States to accept any authority but that of Her Majesty's Government to decide what constituted a political offence. This proposal appears to have been objected to by the present Government, as it had previously been by the late Government, but negotiations under the Act of 1870 have been continued up to the present time. I am bound to say these negotiations have been conducted in a conciliatory spirit by our Foreign Office, and also more consistently than by Mr. Fish, who during the course of them has withdrawn concessions which he had previously made. I am sorry to say that as regards the execution of the treaty Her Majesty's Government do not appear to me to stand so well, either as regards their law or their policy. It may be presumptuous in an unlearned person to criticize the law of the Government, with all the high professional assistance which they can command; but I am encouraged —first, by the points raised not appearing to be very abstruse; second, by the knowledge that very high legal authorities take my view; and, third, by the fact that the Government have in the correspondence constantly changed their own ground. The whole question arose out of the solicitors of a Mr. Lawrence having in July last year informed the Home Office that their client was about to be tried for a second offence, in addition to his trial for the offence for which he had been surrendered. At the instance

of the Home Office the noble lord opposite protested on the grounds that such a course would be contrary to the 3d section of the Extradition Act, by which Act alone (section 27) the American Treaty is kept alive; and contrary also to the law which governs the practice of the United States Government as laid down in the Act of Congress, 1848, and contrary to the practice of all countries. I believe that not one of these grounds is tenable. (Hear.) What has the Act of 1870 to do in an argument with a foreign country about a treaty concluded 28 years earlier than the passing of that Act? It either agrees or disagrees with the treaty. If it agrees, there is no need to refer to it. If it disagrees, in what position are we placed? During the French and German War, the Russian Emperor declared that he would no longer consider himself bound by a particular provision of the Treaty of 1856. But although France, Germany, Austria, and Italy had previously intimated that Russia ought no longer to have this particular provision imposed upon her, which was of a galling character, we indignantly and successfully resisted the assumption that the Emperor, by his own act, could free himself from this obligation. Supported by the unanimous voice of Europe, we obtained from His Imperial Majesty a distinct retractation, and a declaration that it was "an essential principle of the law of nations that no Power could liberate itself from the engagements of a treaty, or modify the stipulations thereof, unless with the consent of the Contracting Powers by means of an amicable arrangement," and in that declaration we ourselves unreservedly joined. After that solemn declaration how could we have pretended that the Treaty of 1842 was affected by our Municipal Act of 1870? Fortunately, however, it is quite clear that it was the intention of the Legislature in 1870 to maintain inviolate the Treaty of 1842, and I could show that, in the opinion of the highest authorities, although the language of the 27th section might have been more precise, the Legislature were successful in their intention. But the question of the Act of 1870 as regards the United States is irrelevant, and has been admitted by the Government to be so in later parts of the correspondence. As to the second point, I will refer later to the construction of the American Act of Congress. With regard to the third point, as to the practice of all nations, these papers show that in America, in Canada, and in Great Britain the practice has been as the Americans state it to have been. As to European nations, I doubt whether any evidence which is exact is forthcoming; and it must be remembered that all

our Treaties with European Powers excepting France date since 1870. It appears from the papers that it was in August the protest founded on the irrelevant grounds suggested by the Home Office was sent to the United States, and that in the following month, September, the Law Officers were consulted. The substance of their opinion is not given in the portion of the Foreign Office letter which is given to Parliament, and they are not again referred to, so I do not know what their advice may have been. In answer to our protest, the Government of the United States repudiated our claim, gave their view of our arguments, but took proceedings to prevent a second trial of Lawrence, and gave us some assurances to that effect. These assurances, however, are not quite consistent with subsequent declarations of *non possumus* made by them. The extradition of a certain Winslow was demanded by the United States Government, and refused by us, excepting on the condition that the United States Government would give an assurance that this person should not until he had been restored, or had an opportunity of returning to Her Majesty's dominions, be detained or tried for any offence committed prior to his surrender other than the extradition crimes proved by the facts on which the surrender would be grounded. The demand for this assurance was placed solely on what had passed in the case of Lawrence and the Act of 1870,—that Act which I have already shown was irrelevant, and which Her Majesty's Government subsequently abandoned. The United States Government again reply on the 31st of March at great length, and with arguments which are not easy to meet. A rejoinder dated the 4th of May is sent by the noble earl (Lord Derby) to Colonel Hoffman; and in this despatch a new line of argument is adopted—whether upon the reconsidered opinion of the law officers or based upon the opinion of a still higher authority I cannot say; but I incline to the latter opinion, and if I am right I cannot help thinking that that high authority has in this and in some previous cases found himself in the same position as great consulting physicians are not unfrequently placed. The physician finds the patient ill; he is determined to save him. He thinks the treatment must be changed, but he also wishes to do nothing which may endanger the reputation of the family doctors. ("Hear, hear," and a laugh.) In this despatch of May 4 it is explained that the Act of 1870 imposed no new condition on the Treaty of 1842, and it is argued that the treaty contains within itself provisions for which Her Majesty's Government contend, and it is for the first time distinctly stated that the provi-

sions of the Act of 1870 have no force or effect in any foreign State. And, again, on the 7th of May the noble earl (Lord Derby) tells Sir E. Thornton that Her Majesty's Government do not rest their case on the Act of 1870, but on the general principles of Extradition, the language of the statutes of both countries putting the Treaty of 1842 in force, and the care taken to specify in the treaty the particular crimes for which extradition can be granted. The additional papers which have been presented contain two more important documents on the execution of the Treaty of 1842—a very long despatch of Mr. Fish, giving the whole views of his Government, and a very able, but not, to my mind, convincing rejoinder from the noble earl (Lord Derby). In this rejoinder the argument founded on the practice of all nations is omitted, and the Act of 1870 is only mentioned to be dropped. But the Foreign Office is again good enough to explain to the Government of the United States the construction of their own municipal law—the Act of Congress of 1848. Though a little rash, it may have been a natural thing to do at the outset of the controversy; but, after an answer had been received from the Government of the United States to the effect that not only the Government and their law officers, but also their Judges in court take an exactly opposite view of the right construction of that Act, it does appear to be a strong and (I will not say ridiculous, but) an anomalous thing for us to continue to explain to them the meaning of their own laws. (Hear.) Then the cardinal question of the case is stated—viz., that it is an essential principle of Extradition as permitted or practised by this country that a person surrendered on an Extradition Treaty can be tried for the offence for which he is surrendered, and for no other offence previously committed; that this is the proper construction of the Treaty of 1842; that it is the meaning which was attached at the time, and which has since been continued to be attached by this country to that treaty, and that it is the meaning which they had understood was attached to that treaty by the Government of the United States. (Hear, hear.) It is possibly from the want of legal acumen on my part, but I cannot find a trace of this condition in the Treaty of 1842. It is certainly not there in words; and if it was understood to be there, why was it not expressed in words? The Act of 1843 confirming that treaty was warmly debated in this House and in the House of Commons. Mr. Macauley and others expressed great alarm lest false charges should be made and false cases got up merely to get possession of a slave. Lord Aberdeen, the late Lord

Derby, Sir R. Peel, and the Attorney-General repudiated the insinuation against the Government of the United States that they would lend themselves to getting up such a false case; but how comes it, if there was an understanding that a surrendered criminal was only to be tried for one offence, and could not be tried for any other, that none of them explained that this safeguard was in the treaty, although it was not expressly stated. (Hear, hear.) If the condition was in the treaty, why did Sir Thomas Henry, in his evidence before the Committee of 1868, say that it was a provision in some treaties and not in others? and why, I should like to know, if the provision was in the treaty with the United States—in which treaty it was not—should he recommend it to be expressly inserted in all future treaties? and why was it necessary so to insert it in the Act of 1870? (Hear, hear.) An ingenious argument is urged to show that the provision was so necessary to the treaty that it must be in it. I do not see any great force in the point as to the surrender of criminals being limited to a specified number of offences. The chief object of that specification is to prevent a friendly Government having to put all its administrative and judicial machinery into motion for any petty and trifling misdemeanour; but when that specification is accompanied by a provision that the crime for which extradition is demanded must not only bear the same name in both countries, but must constitute the offence called by that name in the country called upon to surrender, it may in some cases be a useful safeguard against proceedings for a political offence. But when you proceed to argue that the safeguard is incomplete without a provision that no fugitive criminal can be tried for a second offence, it may be a very fair and good argument in itself, as the Committee of 1868 and the Parliament of 1870 evidently thought. It may or may not be a conclusive argument for the future, but no one can pretend that it is such an axiom as could not have been disputed by the negotiators of 1842, who might have thought it a very great impediment to the administration of justice if the condition had been proposed to them; still less that from the mere fitness of things it must have necessarily been in the essence of a treaty, in which nothing is said about it. I see nothing to make me believe that this condition is in the Treaty of 1842. Her Majesty's Government state what has been their understanding, and what they believe to have been the understanding of the Treaty of 1842, and what they believe to have been the understanding of the United States. The United States Government declare exactly

the reverse, as being their understanding, and what they believe to have been our understanding. Here we have assertion against assertion. What proofs does either side bring forth? Sir Thomas Henry is the first in these papers to make the assertion that has been adopted by Her Majesty's Government. It is hardly consistent with what he stated to the Committee in 1848, and he brought forward no proof whatever in support of his belief. It remains, therefore, simply an expression of his belief—a statement which no one who knew Sir Thomas Henry could for a moment doubt; but yet only a statement of his own belief. What other evidence does the noble Earl (Lord Derby) adduce? A statement made ten years ago by himself as Secretary of State for Foreign Affairs, and one made on the same occasion by the noble lord on the woolsack as Attorney-General. These statements were *obiter dicta* during a debate when the two noble lords were arguing against a provision being introduced which the noble and learned lord said added a new term to the Treaty of 1842. The statement of the noble earl (then Lord Stanley), though not quite so clear as he usually makes them, is perfectly consistent with the theory he now holds. The Attorney-General's statement is not inconsistent with that theory, but at the same time it is also not inconsistent with the opposite theory to which I will presently allude. The words are, "We should have a well-founded complaint against any country that demanded a man to be given up for one offence, and then proceeded to try and punish him for another." I also hold that we should have reason to complain of a country demanding the surrender of a man for one offence and then trying him for another; but I contend that under the Treaty of 1842, after the man has been tried for the offence for which he has been given up, there is nothing to prevent his being tried for another; and the words of the Attorney-General do not necessarily go further than this. But be that as it may, there remains no proof on the side of the Government excepting these two sentences uttered in the heat of a debate. What proofs are alleged on the other side? First the *dicta* of text writers. Such *dicta* are always quoted on international controversies, and I should therefore have thought had some weight. But as they are summarily disposed of in the despatch of Lord Derby as of trifling importance, I will not trouble your lordships with the quotations, which you can find in Mr. Fish's argument. But there is another witness entirely in their favour whom the United States quote, who is treated with as little reverence as the text writers.

It is the noble lord behind me who, as Mr. Hammond, was 50 years in the Foreign Office, and who during half the time the treaty lasted was the head of the permanent staff of the Foreign Office. He is one who knows all the traditions of the Foreign Office, good, bad, and indifferent, absolutely by heart, and who was lately so gracefully alluded to by Lord Derby as his teacher in foreign affairs. If Mr. Hammond had merely stated his own opinion on the construction which had been accepted by the Foreign Office as to a particular treaty, I can imagine no stronger witness in Great Britain, but Mr. Hammond expressly stated in his evidence that his opinion was in accordance with that of the Law Officers. There is another witness, Mr. Mullens, an eminent solicitor, who has been more engaged in extradition cases than any one. He not only gave his opinion as to the understanding of the treaty by this country in the opposite sense to the present contention of the Government, but he mentioned a case—that of the Heilbron, who was tried for a second offence after having been tried for the offence for which he was surrendered—a case concerning which the Government can only answer that they were ignorant of it, and were not concerned in the case. To sum up the evidence given before the Committee of 1868. There were six witnesses. Of these Sir Thomas Henry, Mr. Hammond, and Mr. Mullens gave the opinions that I have quoted, and not one of the other three witnesses gave an opposite opinion. What other evidence is there in favour of the United States Government? As to the understanding which existed in both countries, they have the decisions of Courts in the States, and the cases of persons actually tried for a second offence. There are also the decisions of the Courts of the Dominion of Canada in the same sense, and from what I hear the Government of the Dominion are much concerned, and entirely repudiate the position which Her Majesty's Government have taken. But what appears in the last batch of papers which have just been presented? Those papers show three things. In the first place they show that 11 years ago Mr. Seward informed our Government of the construction which the United States then put on the treaty, which is diametrically oposite to that now held here, and which disposes of the assertion of the contrary understanding on the part of the Government of the United States. Secondly, they point to the case of Burley before the Act of 1870, on which the Foreign Secretary, Lord Russell, gave his opinion in communication with the Colonial Secretary, Lord Cardwell, and upon advice of the Law Officers, who I believe were

the late Lord Chancellor, who is sitting behind me, and the present Master of the Rolls, that it would be a breach of faith to substitute another offence for that for which Burley was surrendered, but that if Burley were *bona fide* tried for the first offence it would be difficult under the Treaty to question the right of the Government to try him for any other offence, whether such offence was or was not a ground of extradition, or even without the treaty. Does the Burley case prove that the present contention has always been maintained by the Government of the United States and by Her Majesty's Government? In my opinion it proves diametrically the reverse. Well, what does the Caldwell case prove? The Caldwell case is summed up in the following letter:—

"Downing street, May 16, 1871.

"My Lord,—I have the honour to acknowledge the receipt of your lordship's despatch of the 20th of February relating to the case of Richard Caldwell, who was surrendered to the United States Government under the Extradition Treaty on the charges of forgery and uttering forged paper, and who is alleged to have been subjected to legal proceedings in the United States for an offense against the laws of that country for which he was not surrendered, and for which he was not liable to surrender under that treaty. I have been in communication with the Secretary of State for Foreign Affairs as to this case, and the opinion of the Law Officers of the Crown has been taken upon it. Her Majesty's Government are advised that this is not a case in which they would be justified in claiming the surrender of the petitioner from the United States Government. The obligation of Great Britain under the Convention of 1842 is qualified by no other condition than that evidence of a definite kind shall be forthcoming of the fugitive having committed one of the crimes enumerated in the Convention. It appears that such evidence was produced to the satisfaction of the Canadian authorities, and the petitioner was therefore surrendered to the United States Government. It further appears from the decision of the Judge of the Circuit Court of the Southern District of New York, upon the demurrer of the petitioner, that he has been duly indicted for the offence by reason of which he was surrendered, and it seems that he is to be tried for it. Her Majesty's Government are further advised that there is nothing in the Convention which would preclude the indictment of the petitioner in the United States for an additional offence which is not enumerated in

the Convention, so long as such proceedings are not substituted for proceedings against him on the charge by reason of which he was surrendered. The original enclosures which accompanied your despatch are herewith returned in compliance with your request.

"I have, &c.,

(Signed), "KIMBERLEY."

Unless I have committed some great blunder, it appears to me that I have shown that the different legal positions which have been taken by Her Majesty's Government in this matter are not unassailable. It appears to me that the papers themselves demonstrate that it is absolutely the reverse of the fact that Her Majesty's Government have always maintained the doctrine which it has been attempted to hold by Her Majesty's present Government. I presume that my noble friend will hasten to assure the House, if he has not already given that assurance to the United States, that this last declaration was made *per incuriam*, and I believe that any such declarations would pave the way to more easy negotiations for a future treaty. I do not know whether he will attempt to defend the conflicting assertions as to law which he has been advised to make. But he has one complete answer as regards the Foreign Office. It is in no sense a legal office. Until this month there has never been a professional lawyer in the office, and I am not quite sure that the introduction of the legal element into the office may not be productive of more embarrassment than advantage. Whenever a legal question has arisen, the Foreign Office has been advised by the highest authorities on it. In the case of extraditions the Foreign Office have always acted ministerially for the Home Office, and therefore if the noble earl defends the Foreign Office on the grounds that the legal opinions have been taken from others, although it does not clear the Government at large, the answer is complete as respects the Foreign Office. But how about the policy, for which the Foreign Office is clearly responsible? Would it not have been better to delay protesting till the occasion arose, and thus postpone till it was necessary that which committed us, and obliged the United States to commit themselves, and this more especially as there was not the slightest chance as regards this particular treaty of danger to the principle of affording an asylum to political offenders? This was the course Mr. Seward took 11 years ago, when, assenting up to a certain point to Lord Russell's doctrine, but going beyond it, he said with good sense, "But this is an abstraction, and I will

not deal with what does not arise." But what was the view of Lord Derby? The following letter in reference to the case of Charles L. Lawrence was written in November last by his instructions:—

"I am directed by the Earl of Derby to transmit to you, for the information of Mr. Cross, a further despatch, which was received on the 16th inst. from Her Majesty's Minister at Washington, from which it appears that the United States Attorney-General has instructed the United States District Attorney at New York to the effect that the trial of Lawrence is to be proceeded with on the charge of forgery, for which his extradition was granted, and that if he should be acquitted of that charge the District Attorney is to await further instructions. Under these circumstances Lord Derby would suggest, for Mr. Cross's consideration, whether it would not be advisable that any representation to the United States Government on this subject, should be, in any case, postponed until after the trial of Lawrence for the extradition crime for which he was surrendered, and that any instructions to Sir E. Thornton should be framed accordingly. His lordship's reasons for this suggestion are that, in the event of Lawrence being convicted of this crime, and not being indicted for any other offence, no representation to the United States Government would be necessary, and that in the event of his being acquitted of the extradition crime, and then indicted for other offences, the opportunity for making a representation to the United States Government would be a more fitting one than at present. In the latter case, also, Her Majesty's Government would be acting with a full knowledge of the course which the United States Government intends to pursue, and would therefore be in a better position to protest, if necessary, than they are at present, as it still appears doubtful whether Lawrence is to be tried for offences other than the extradition crime for which he was surrendered."

No opinion could be more judicious, and I am perfectly convinced that if this judicious advice had been adopted we should have heard no more of the question, and we should have avoided all the irritating circumstances which now make the negotiation for a new Treaty so difficult. (Hear, hear.) On the other hand, it must be admitted that if this opinion had prevailed we should now be deprived of the society of three American citizens whose surrender has been demanded but not granted, and who will remain with us for life, or until the moment they are detected in murdering, robbing, or cheating in this country. ("Hear,

hear," and a laugh.) But the Home Office would not hear of this, they were in such a hurry that their only rejoinder was a direction not only to send off a protest, but to send that protest by telegraph, and they only forwarded their reasons at a subsequent period. (Hear, hear.) Mr. Disraeli announced to the Commons the other day that the Home Secretary is the Chief Secretary. He is no such thing. The Secretaries of State are of equal rank, taking formal precedence according to the date of the creation of their respective offices. (Hear, hear.) But in this case the Home Office appears to have assumed some such authority, for not only does it overrule the Foreign Office in a matter which belonged to the latter, but a little later we find the Home Office scolding the Foreign Office for not having made its points with sufficient clearness. The one fault for which I think the Foreign Office was responsible was yielding to the Home Office on a matter on which the latter, perhaps naturally enough, only took the one-sided view. But, whoever is to blame, this question of extradition has come to a dead-lock. I believe the Treaty has not been put an end to, but it remains a dead-letter. It is clear that neither Government will ask for or grant the surrender of any criminal under it. I hear already of cases where criminals have openly boasted of their safety. We have already this year secured for ourselves the society of three persons, against whom very grave charges have been made. The late Lord Derby told the House of Commons that an Extradition Treaty was of much greater importance to us than the United States, especially with regard to Canada. I do not care to enter into the proportionate share of inconvenience which each country—the commercial communities above all—will have to bear, but we must not conceal from ourselves that the evil is not to be measured by the number of extradition cases which have occurred. It is rather to be gauged by the amount of crime which will be augmented by the increased chances of impunity to the criminal. (Hear, hear.) In these circumstances I trust that the Government will see their way to some mode of extricating ourselves and the United States from this difficulty. (Hear, hear.) Is there no hope that the delay which was asked for last week may result in our being told this evening that the United States are conceding the differences that still exist as to the terms of a new Treaty? The difference which remained when the late Government went out of office was so small that some arrangement ought to be arrived at on it. (Hear, hear.) The Act of 1870 was a good Act and has produced much good, but can any one say

that it had attained the perfection of human wisdom on this matter? It is certainly the opinion of many competent persons that it could be made more elastic as regards the extradition of ordinary criminals, without in the least degree affecting the right of asylum to political offenders. (Hear, hear.) There is another suggestion which I venture to throw out: It was proposed eight years ago that instead of Treaties we should have a law applicable to the demands of all countries for the extradition of criminals, without troubling ourselves whether the other countries responded or not. It was considered at the time, and it was decided, that it was better to proceed by Treaties under a general law. But times are now changed. We have Treaties with nearly all the principal countries in the world, except Russia and the United States. If we passed such a law, being of a reasonable character, and somewhat more elastic than the present, it is almost certain that the United States would avail themselves of it, and would, as has already been suggested to them in America, pass a law on their side. It is for the interests of both countries to obtain their own fugitive criminals, and it is not in their interest to monopolize the possession of the fugitive scoundrels of other countries. ("Hear, hear," and laughter.) I should prefer a new Treaty cordially agreed to, but I throw out this suggestion in case Her Majesty's Government find difficulties arising in negotiation for a Treaty, which would not occur in separate legislation. But whatever the course may be which Her Majesty's Government think fit to pursue, this House will agree with me in the conviction that the Government will not be satisfied with having written a smart argumentative despatch to conclude the discussion, but will apply themselves heartily to the work of changing a state of things which Sir Robert Peel eloquently denounced more than a quarter of a century ago as a public disgrace—viz., that two such countries as Great Britain and the United States should each consent to remain a refuge for the criminals of the other country. (Cheers.)

The Earl of DERBY.—Before I go into the main question which the noble earl has raised, I may be allowed to refer to the request I was reluctantly compelled to make on last Friday night for a postponement of this discussion until to-day. I had up till that time hoped to be able to make a statement this evening material to the actual condition of the facts. Since Friday I have received no communication on the subject, and I am not at present in a

position to make any such statement to the House as I had hoped to do. My only justification, therefore, for asking for delay on Friday last is that I did not ask it for my own convenience, or in the interest of the Government, but for the interest of the public. (Hear, hear.) The question which the noble lord has raised has been so long and so often before the public that all the facts and the arguments on both sides, embodied in the late correspondence, are presumably familiar to all who have cared to acquaint themselves with the subject. I propose, therefore, in explaining the course which the Government has taken, to confine myself as far as possible to a general statement of the principles on which we have acted. Putting it briefly, the controversy between the American Government and ours is this: We take different views of what is meant by extradition and of the construction which is to be placed on the Treaty between the two countries. The American contention is that when the forms prescribed by Treaty have been gone through, and when extradition has once been effected, the person so extradited is for all purposes in the hands of the Government which has received him, although he may have been acquitted of the charge on which the extradition was granted, although in the original demand for his surrender no mention was made of any other imputed offence, and even although the offence for which he is put on his trial a second time may be one not included in the list of extradition crimes. They argue, in short, that, once in their hands, and having been tried for the extradition offence, he remains in their hands for all other purposes. We, on the other side, contend that a person who has taken refuge in England and has been surrendered after certain legal proceedings for the purpose of being tried on a specific charge, is only lent, so to speak, to the Government which claims him for the purposes of that trial; and if upon the charge so brought he is not found guilty, then we say he is entitled to his freedom and cannot be claimed again, except after a repetition of the preliminary inquiry which is necessary before extradition is granted, which, of course, implies that he must have an opportunity of returning to England. These are the two opposite views which are represented in the correspondence, and which each side has endeavoured to support by argument. The American Case seems to rest mainly on this, that the Treaty contains no express stipulation on the subject, that it simply provides a method by which the accused person shall be surrendered to the Government claim-

ing him, and that, in the absence of anything said to the contrary, the Government or the Courts of Law, once legally in possession of the man, are personally entitled to deal with him, subject to no restraint except that which is imposed by its own laws. They further argue that on certain occasions the right which they claim has been exercised and no objection made, and that it has been exercised in England, by English Courts, as well as in the United States. We admit that the Treaty contains no stipulation on the subject, the case, as we conceive, not having been provided for by those who framed it. But, on that part of the case, our answer is that the right which they claim is contrary to the general spirit and intention of the Treaty; contrary to what has always been understood as the practice; contrary, also, to the principles laid down both by the British Parliament and the American Congress. We contend that the Government surrendering an accused person does so only after having satisfied itself by means of a judicial inquiry that there is a reasonable *primâ facie* case which justifies the putting him on his trial—just as no man can be tried here without first being committed by a magistrate, or, in some cases, without a true bill being found against him. It is also necessary that it should be shown to the satisfaction of the magistrate so committing the person for extradition that the offence of which he is charged is included among extradition offences and is not political in its character. Now, we say that both these safeguards are absolutely done away with if it is understood that a man extradited for one offence can be tried for another without a fresh extradition being made. A man is charged, say, with forgery. Extradition is granted. He is tried in America, and acquitted. It is clear that if all the facts which came out on the trial had been known to the committing magistrate he would not have been extradited at all on that charge. What right, then, has the State, which has only got hold of him as presumably guilty of that offence, to deal with him on another charge in a way that they could not have done if he had not been in the first instance unjustly accused? They are, in such a case as I have supposed,—I use the phrase in a legal and not in a moral sense,—taking advantage of their own wrong. They have already subjected him to a forced deportation across the Atlantic and to the inconvenience of a trial which has ended in his acquittal, and they then take advantage of having him in their possession—which, as the facts have

turned out, they never ought to have had—to try him for something else as to which, if he had remained in England, it is quite possible that extradition would never have been granted. If we admit, as we must, that the Treaty is silent on the subject, that it includes no express words to meet this class of cases, it seems to me that we are fairly entitled to contend that this is not a proceeding contemplated when the Treaty was framed or reconcilable with its general spirit. The Treaty says:—"Before a man is surrendered to take his trial there must be a preliminary inquiry in the country which gives him up." The American construction of the Treaty says:—"He is entitled to such preliminary inquiry in regard to the first offence for which we put him on his trial, but for any other offences, however many or of whatever kind, there need be no preliminary inquiry whatever." Now, that is just the one position which seems to me at least logically untenable. You may argue for the necessity of preliminary inquiry in all cases; you may argue on the other hand that such investigations are an unnecessary form, because if you trust the Government to which you surrender the man, you may be assured, without such inquiry, that they will try him fairly, and if you don't trust the Government to deal fairly, you should not surrender him at all. Either of these alternatives, I think, is fairly defensible, but it is not consistent with either theory to say, "We will give the accused the security of a previous inquiry in regard to the first offence for which he is tried, but we will not give it him in regard to any other charge subsequently brought against him." (Hear.) But as regards the intention of our Government and Parliament we are not left to mere abstract reasoning or inference. We know by the Act of 1870 what was and is the mind of the Legislature on the question of principle involved. The Act of 1870 provides that no surrendered fugitive shall be tried in the country which has demanded his extradition for any offence other than the extradition crime proved by the facts on which the surrender is grounded. Words cannot be plainer. Now, I don't quote that Act, as I have been understood to do in America, as having a retrospective effect on Treaties previously concluded. I fully admit that there is a proviso which, though obscurely worded, seems to except, and no doubt was meant to except, the case of Treaties actually in force. I have a right to say that it is obscurely worded, for three Judges who endeavoured to construe it expressed doubt as to its meaning. It could not, in fact, be other-

wise, because if the provisions of the Treaty of 1842 had been retrospectively affected by the Act of 1870, it would have been a matter of necessity either to alter the Treaty or to modify the Act. But I do quote the Act as showing what is the principle which Parliament has laid down, and also as showing that that principle was not considered inconsistent with the treaty. If it had been so considered, does anybody suppose that the two would have been allowed to remain side by side? We could not maintain—the Government of the day never surely intended to maintain—in a question affecting the administration of justice one rule for countries which had made Treaties with us before 1870 and another for those that had not. If, therefore, we left the Act of 1870 to stand side by side with the Treaty of 1842, it could only have been because we did not think them inconsistent in principle the one with the other. But I do not rest on that alone. In the English Act of 1843, passed immediately after the conclusion of the Treaty, the Secretary of State is authorized to order the delivery of the person committed to an officer who is "to convey such person to the territories of the United States to be tried for the crime of which such person shall be so accused." And not only that, but the United States Legislature adopted almost identical language. The Act of Congress of 1848 follows the very words of ours, and says that the accused person who is extradited from America shall be delivered up to be tried for the crime of which such person shall be so accused. Now, without wishing to lay too much stress on a phase, that seems to me very nearly equivalent to saying that he is not to be tried for any other crime except that of which he is so accused. The words are not required, and, indeed, have hardly a meaning, if you put any other construction upon them. The noble earl says:—"The United States do not put that sense upon it, and you are very bold if you question their construction." But it is written in English, it is following the words of the English Act, and surely an Englishman may venture to construe plain words? (Hear, hear.) Sir Thomas Henry advised that in a new Treaty words should be inserted to make the meaning plain, and the noble earl wants to know why he did so. It is contended, however, that it is no longer open to us to maintain the construction of the treaty for which we argue, because we ourselves have on various occasions accepted a different interpretation. Now, I do not want to go into more detail than I can help, but I will take these various cases one by one. There is the case of Heilbron.

He was surrendered by the United States on a charge of forgery, and tried in a British Court for that offence. He was acquitted of forgery, but convicted of larceny. He never appealed against the conviction, nor did the United States take the matter up; and, as a matter of fact, there is no reason to suppose that the circumstances of the conviction were even known to the Government here. It cannot be said, therefore, that in this case there was any admission on our part. The Court was not able to take into consideration the question of treaty, and it does not appear to have been ever before the Court. The question, in fact, was never decided, because it was never argued or raised. The case of Bouvier was a case which arose under the Extradition Treaty with France. In that case again no action was taken or required to be taken by the Government, the French law making it impossible that the man should be tried for any offence except that on which he was extradited. The only noticeable point in this case was that the Attorney-General for the time being, in the year 1872, that is in a Government of which the noble earl opposite was a member, is reported to have said that. "It was the law of France, and of every civilized country; that a man given up for an extradition offence should not be tried except for the offence for which he was given up. For this Government to give a man up otherwise would be a most serious infringement of the right of asylum." We have never laid down the principle more strongly. I do not see how it is to be reconciled with the language held in the Canadian cases, but that is not my business. The Canadian cases are six in number. In two of them the prisoners had been surrendered by the United States, and were tried in Canada, and the Courts seem to have held that being in custody they were liable to be tried for any offence which the facts might support. In two others, application was made by the United States for the surrender by Canada of prisoners who had taken refuge there, and the Canadian Courts held that they were not justified, by the mere fact that the new Act of 1870 did not secure these against trial for any other offence in refusing to give them up. That is not a decision on any other point except the wording of the Act of 1870. It does not bear, as far as I can see, on the question of treaty construction at all. In all these four cases, if I am right, there is absolutely nothing to show that the Home Government was consulted at all; and I need not say that the decision of a Canadian Court of Justice cannot bind the Government

here, which probably knew nothing of the matter. The two remaining cases were those of Burley and Caldwell. Burley was surrendered by the Canadian Government to the United States on a charge of robbery. It was represented to the British Government that there was an intention of trying him on a charge of piracy, which had not been mention in the demand for his extradition. Upon that the Law Officers were consulted; they reported, no doubt, in a sense partially favourable to the present American construction of the treaty. But they advised that it was our right to protest against any attempt to change the ground of accusation. A protest was made accordingly, and led to a reply from Mr. Seward which is so important that I wish to quote it at length:—

"Mr. Seward to Mr. Burnley.

"Department of State, Washington, March 20, 1865.

"Sir,—I recur to your note of the 15th of March, which relates to B. G. Burley. The honourable the Attorney-General informs me that it is his purpose to bring the offender to trial in the Courts of the States of Ohio and Michigan for the crimes committed by him against the municipal laws of those States—namely, robbery and assault, with intent to commit murder. He was delivered up by the Canadian authorities upon a requisition which was based upon charges of those crimes, and also upon a charge of piracy, which is triable not by State Courts, but by the Courts of the United States, I am not prepared to admit the principle claimed in the protest of Her Majesty's Government, that the offender could not legally be tried for the crime of piracy under the circumstances of the case. Nevertheless, the question raised upon it has become an abstraction, as it is at present the purpose of the Government to bring him to trial for the crimes against municipal law only.

"I have, &c.,

"W. H. Seward."

Mr. Seward, therefore, was under the impression—though I believe it proved to be a mistake—that piracy was among the charges on which Burley was surrendered. It does not seem that the protest was renewed, and our official knowledge of the facts ends here. Mr. Fish in his recent Note says that he was tried for assault with intent to kill, but that is a fact of which till this correspondence we had no information. The case of Caldwell is generally similar. He

was surrendered by the Canadian Government on a charge of forgery. He was subsequently indicted in the United States for bribing a Custom-house officer, as well as for the forgery. He pleaded that the Court ought not to take cognizance of the offence; the Court overruled the plea on the ground that it was one for the Governments concerned to entertain, but which could not be dealt with by a Court of law. He therefore appealed to the Canadian Government. The matter was referred home, and the Law Officers advised that the case was not one in which Her Majesty's Government would be justified in claiming his surrender. He had at that time not been tried for the extradition offence; and it was intended to put him on his trial for that offence. The decision not to interfere in the matter was communicated to the Governor of Canada, and there the case ended so far as we are concerned. Now, I am not about to deny that these two cases show clearly enough that the view of our international duty taken by the then Law Officers is different from that which we have been advised to adopt. (Hear, hear.) But I deny altogether that that difference of views disposes of our case. (Hear, hear.) I speak with the highest respect of the legal advisers of the Governments of 1864 and of 1870, but they would not claim that their opinion could bind their successors. And observe this, that though they do not advise that in certain cases a claim should be pressed, though they express doubt whether it ought to be pressed, yet in no part of this correspondence has the claim ever been abandoned. We have never said to the American Government that we thought it one which could not be justly advanced. We have simply forborne to press it in certain cases and it is possible and conceivable that other motives may have operated besides those of a judicial or administrative character. I can quite understand that both in 1864 and in 1870 reasons of a political character may have indisposed the then Governments to press any demand on the United States as to which in their minds any doubt may have existed. I am not attacking what they did; but I contend that to waive a right on one occasion, or on two, is not to abandon it; that the opinions of the Law Officers of one Government, however deserving of respect, are not international documents; and that as between the United States and England nothing has passed which amounts to an abandonment of the claim which we put forward in this correspondence. I now come to the question which I have heard raised, and which has been raised by the noble earl this

evening, whether even admitting our construction of the treaty to be defensible, we have asserted it in the right way. It is argued that we ought to have waited until some actual violation of the treaty, as we construe it, had occurred and that we had no right to call on the United States Government to abandon their construction of it—that we ought, in short, to have taken no action unless some person surrendered by us was actually put on his trial a second time. My answer is, that is shutting the door after the horse is stolen. The question is not one of law but of reason and common sense. When it is evident that an engagement is understood by the two parties to it in a different sense, the sooner that difference is cleared up the better. What would happen if we took the course suggested? Why, that the United States Government would, sooner or later, act on their presumed right, as they had given us notice that they would do, but we should dispute the legality of their action, and that we should be obliged by our expressed opinion to demand that a prisoner actually in their hands should be given back. That is a demand with which in their view of the case they could not honourably comply, and there you have a diplomatic complication ready made. It is running all risks in the future in order to secure a respite from trouble at the moment. I hear it said, again, that the risk run by conceding the question at issue is trifling; that the inconvenience of passing it is great, and that we had better have settled the matter anyhow than have left it open. My lords, I cannot admit that, as English Ministers, we are justified in treating as immaterial a principle on which Parliament six years ago laid so much stress as to embody it in express terms in an Act of Parliament, passed after much inquiry and debate. Parliament might release us from the obligation which it has imposed, but we cannot release ourselves. And this principle is not unimportant. It really involves the whole question of political asylum. (Hear, hear.) I have no wish to talk claptrap about the right of asylum, but we know how strong the public feeling is in regard to it. Now, take such a case as this—a French refugee, mixed up in the affairs of the Commune, is asked for by his own Government, *bona fide*, on a charge of a non-political character. He is surrendered, he is tried, and acquitted or condemned, as the case may be. But while in the hands of the French authorities it turns out that he has been mixed up in revolutionary disturbances, and after his acquittal they proceed to try him for that. Would not that be a case which, how-

ever worthless the person might be, would excite strong feeling in England? And yet what security have you that such a case might not occur if you abandon the principle that the extradited person ought to be free to return after trial on the extradition charge? It is argued, there is no fear of any question of the kind arising with the United States, because their feeling in such matters is the same as ours. To that I have a double answer. In the first place it is not wise in matters of business to rest on the supposed dispositions of other Powers as your sole guarantee. We do not in private life suppose that everybody with whom we deal intends to cheat us, but we take a receipt when we pay money. But there is a further answer. You cannot have one rule for the United States and another for the rest of the world. Your Extradition Law must be the same for every country. Any other course would be invidious and untenable; and it is carrying confidence very far to affirm that no Government exists anywhere to which you would not be ready to trust in a matter of this kind. I might push the matter still further. In the event of any person being put on his trial in the United States for a political offence it would not be in the power of the Government to prevent the trial. Such is in brief our case. I cannot take your lordships through the argument in detail, as it is set out in the published correspondence. But I may remind you of one fact—that there have been negotiations going on for a new treaty, which extended over a considerable time. In the draught of that new treaty we proposed an article embodying the principle for which we are now contending, and the Government of the United States, so far from objecting, accepted the article, and did more: they proposed to strengthen it by words which should make the meaning clearer. The failure to conclude a new treaty turned on an altogether different point; but upon this point the Governments were absolutely at one. One thing to say this or that should be put in a treaty; another to say it is there. I think that is evidence that there is nothing in principle unreasonable in the view we have taken, and also—what is quite as important—it shows that there is no such difference between the two countries as should prevent the negotiation of a new Treaty. Nobody is insensible on either side the water to the inconvenience that would be caused by an even temporary suspension of extradition. The two countries have absolutely the same interests, and the differences are not of a kind to be very difficult of arrangement. (Hear, hear.) We

shall at once renew the negotiation formerly interrupted; it will be an advantage to all parties, for everybody admits that the old treaty is imperfect and unsatisfactory, and what I think we ought to aim at is the establishment, if it is likely that the negotiations will last some time, of what diplomatists call a *modus vivendi*, a provisional arrangement which shall prevent rascals from benefiting by the falling out of honest men. I do not think it is a disadvantage that this question should have arisen. There is an ambiguity in many respects in our Extradition Treaty with the United States, and there are many reasons for superseding it by a new one, and we shall do all in our power to see that that is done. (Cheers.)

The Earl of KIMBERLEY said there was no dispute as to the right of asylum being maintained, and with the observations made on this point by the noble earl he fully agreed. Our duty seemed to him to be to refuse to deliver up any offender who, there was reason to believe, would be put on his trial for a political offence. In the case of a person being surrendered for one crime and being tried for another of a similar kind he did not think we had any right to interfere. It was the common interest of all civilized peoples that crime should be punished, and it did not seem to him to be our duty to scrutinize narrowly the criminal law of foreign countries. All we had to do was to guard against criminals being tried for political offences in addition to the crimes for which they were surrendered. If they were tried for offences other than political surely we had no interest in interfering. So far as the interpretation of the Treaty of 1842 was concerned, the Act of 1870 might practically be left aside, for it could not introduce any new conditions to be observed. The treaty itself was the only document which could properly be taken into consideration in forming an opinion on the subject. Now, in the treaty the sole condition laid down for the surrender of a criminal was that there should be sufficient *prima facie* evidence shown to put him on his trial, and if any other condition was intended to apply the absence of all mention of it was incomprehensible. Surely the natural presumption in this case was that no condition other than that laid down in the treaty was intended to take effect. The United States Government very justly remarked that the view taken by our Government had not always been adopted in England. Indeed, he did not understand how the noble earl opposite, in view of the cases before him, could have asserted, as he did in one of his despatches,

that one of the essential principles of extradition, as invariably practised in this country, was that an extradited person could only be tried for the crime on which he was surrendered. The fact was that two previous Governments had taken a different view, and in making the statement which he did the noble earl certainly gave an advantage to the American Government. He (Lord Kimberley) could not help thinking that the error of the Foreign Office was due to the great haste with which the matter was considered, only two days having elapsed from the time the subject was brought under the notice of the noble earl till he committed himself to the view, taken without sufficient inquiry, as it appeared, by the Home Secretary. The law officers were not consulted till a later date, and it was rather a singular fact that their views were never referred to in the correspondence. He was inclined to think that if the noble earl the Foreign Secretary had waited until he saw what the issue would be, neither Lawrence nor Winslow would have really been tried for any other offence than the one on which they had been surrendered. And, considering that there was no actual breach of the treaty, and looking to the disposition which the United States Government had shown not to press their view to the utmost, he believed that the noble earl might, with a little more patience and forbearance, have saved the treaty from the abrupt termination at which it had, unfortunately, arrived.

Earl GREY could not help thinking that in that discussion the importance of what was called the right of political asylum had been exaggerated in a manner which was likely to lead to dangerous consequences. He admitted that it was not fit that this country should give up to the vengeance of a tyrannical Government men who had risked their lives to obtain liberty for their country; and no doubt we should be utterly disgraced if we surrendered men who had stood out against such a Government as that of the late King of Naples, or against such an act as the partition of Poland. But he held that the attempt to resist by force a settled Government which performed, even perhaps imperfectly, the duty of all Governments in maintaining peace and order, was a crime which, unless provoked by extreme oppression, was not only legally and technically, but morally, one of the greatest that men could commit. Looking at the enormous amount of evil which arose from civil war, he said that those who acted in that way were not entitled to the sympathy of mankind. Therefore

he thought it was a great mistake to say that because there was some possible danger that in some very unlikely case a man might be punished for what was in itself an offence—namely, resistance to a settled Government—in consequence of the measures they adopted to protect society against ordinary criminals, they were to neglect to make the arrangements with other countries which were absolutely necessary for the prevention of crime. The perils to society and to the maintenance of order would be very great if they were to push to the extreme which had been recommended from both sides of the House that claim to political asylum at the risk of preventing the surrender of ordinary criminals. They should take care how they established a state of things which would offer enormous inducements to men either in England or in America, who might think there was an opportunity by some great crime of realizing a large sum of money and then going to the other side of the Atlantic to enjoy their spoil in peace. He found from the correspondence that the Secretary of State contended that no man should be tried in the country to which he was surrendered except for the one offence on which his surrender had been demanded. He believed that the American Government were perfectly right in saying that there was no provision of that kind in the Treaty of 1842, and that in the absence of any such provision we had no right now to introduce that rule. Was it desirable, when they surrendered a man who was *bona fide* accused of one particular offence, that he should not be tried, convicted, or punished for any other offence which in the course of the proceedings it might come out that he had committed? He said that that was contrary to the common interests of all civilized society. A remarkable case lately occurred which proved the inconvenience of such a rule. A number of men were tried in this country for a most atrocious crime on board the Lennie. Some of them were convicted, and were most properly hanged; but the others, who were accessories after the fact, because of an arbitrary rule laid down in our Extradition Treaty with France, entirely escaped from punishment. But what would be the consequences were the view of Her Majesty's Government in this case to be adopted permanently? Winslow had been charged with having committed 14 or 15 distinct cases of forgery; but witnesses had been sent to this country from the United States in support of one charge only. In the event of his being surrendered he ought, in the view of Her Majesty's Government, only to be tried upon that one single charge, and therefore if, through the chances of the

law, he succeeded in escaping from conviction upon that one charge, the United States Government would be precluded from trying him upon any of the other charges, and the end might be that a notorious criminal might get off altogether. Such a result would not, in his opinion, be for the advantage of the civilized world. (Hear.) The subject seemed to him to have been dealt with upon a wrong principle—that of an undue fear for the security of political offenders. Taking into consideration the close relation that existed between this country and the United States and Canada, the evil that would result from the immunity of fugitive criminals would be enormous. It was, therefore, with much regret that he heard the noble lord opposite say that our action on this subject must be largely influenced by a feeling of sympathy for political offenders. If the people of this country were unduly influenced by that feeling it was the duty of the statesmen and the leading men in both Houses of Parliament to endeavour to set them right on the point, and to show them that it was not for the sake of maintaining the freedom of political offenders, on behalf of whom too often an undue amount of sympathy was excited, that we should run the risk of allowing ordinary criminals to escape a just punishment. There was another and a very important point on which he wished to make a few observations. He had observed with great regret that the papers on this subject which had been laid before Parliament were additional examples of a mistaken system which had grown up of late years, under which the differences of opinion entertained by the various Departments were exposed to the whole world. It appeared to him that that practice was calculated to break down and destroy the authority of Government. The proper course would be for the Cabinet to take the responsibility for these decisions upon themselves, instead of allowing these discussions to be made public. The inconvenience of the practice had been illustrated in the present case, where the United States Minister had been able to quote the opinion of one Department against that of another. (Hear, hear.)

Lord HAMMOND, having been referred to several times in the course of this debate as having given evidence before the Committee of 1868, wished to make a few remarks on the question before the House. The attention of that committee had been very specially directed to two points—namely, the surrender of persons accused or liable to be accused of political offences and the liability of persons surrendered for ordinary crimes to be tried only for the of-

fence for which their surrender might have been made. With regard to the propriety of exempting persons surrendered from being tried for any offence other than that for which they might have been surrendered there was no material difference of opinion between the witnesses, they all agreeing that it was desirable to provide against such a case. He had himself expressed a decided opinion that, according to existing law and practice, no objection could be raised to the subsequent trial of a surrendered criminal for any other crime besides the particular crime for which he was surrendered, provided that he had been *bona fide* tried for that crime. In conclusion the noble lord suggested that the tenth article of the Ashburton Treaty should at once be denounced by Her Majesty's Government, if it had not already been so denounced by the Government of the United States. After what had passed it seemed hopeless to attempt to negotiate on the basis of that particular article; but when a sufficient time had elapsed to admit of both countries feeling the inconvenience of no Extradition Treaty existing between them, it might be possible to come to an arrangement with the United States Government founded on the Act of 1870.

Lord COLERIDGE entirely concurred in opinion with the noble earl who raised this discussion. When the case of Caldwell occurred, his right hon. and learned friend Sir Robert Collier was Attorney-General and he himself was Solicitor-General. He then held the opinion, which he still entertained, that there was no ground for the view which had been maintained by the noble earl opposite. It happened, too, that the proceedings in the French case which had been referred to were taken under the advice of himself, as Attorney-General, his learned friend the present Master of the Rolls being then his colleague as Solicitor-General. They were both of opinion that the view brought forward to-night by the noble earl near him (Earl Granville) was the true view which this country ought to maintain on the subject now under discussion. He and his learned friend had in other cases also to advise on their own responsibility the Executive Government of that day, and the view now put forward as to the strict construction of the Act of 1870 never occurred to their minds. Whether the opinions held by him and his learned friend were right or wrong, others of course must determine, but at all events those opinions were not taken up lightly or for any political motive. He had always been of opinion that the Act of 1870 could not in any fair construction be considered to have

any bearing on treaties which under statutes previously passed themselves claimed the force of law. Indeed, his argument in the French case was that the French Treaty was in no way affected by the Act of 1870. The treaty with France was the same, for the purposes of this discussion, as the treaty with the United States. It was couched, as far as this matter was concerned, in substantially the same language, and it wanted the provision the absence of which gave rise to the present debate. The argument he adduced before the Court of Queen's Bench was that we were not only justified but bound to surrender to the French Government the person to be tried without there being a special arrangement in a particular case that he should not be tried for any offence except that for which he was extradited. The majority of the Judges of the Court of Queen's Bench assented to the correctness of that argument. The only dissentient, if indeed he could be called a dissentient, was Mr. Justice Blackburn, who, however, did not doubt the intention of the Legislature, although he thought it had not been expressed with sufficient precision in the Act of 1870. His contention was that the Court of Queen's Bench had distinctly expressed its opinion that the Act of 1870 could not have any retrospective effect on the Treaty of 1842. It was clear that if we attempted to enforce upon somebody else a provision not contained in the contract we should be endeavouring to enforce something that was inconsistent with it. (Hear, hear.) The argument that we had always acted on the understanding that the person delivered up should be tried only for the offence for which he was extradited, and that this understanding had been imported as an arrangement into all the treaties made prior to the Act of 1870, appeared to him to be equally without foundation. In the first place, he denied that we had in all cases maintained and acted upon such an understanding. The contention of the Government amounted to this—that a breach of the most technical rules in the construction of a Treaty which ought to have the largest and most free construction between two great nations might make extradition in any case utterly useless. Take, for example, the case of Lawrence, who was said to be guilty of a long course of wholesale fraud. How, he should like to know, could all those charges be dealt with in a foreign country? There was a case now pending in our Courts in which there were 145 different counts, each constituting a separate offence, and was it to be supposed that every one of those could be carefully gone into on the other side of the Channel with endless trouble and at enormous expense,

or that a criminal should go scot free for the fear the sacred right of asylum should be violated? He would not, at that hour, enter into the distinction which had been taken by Mr. Fish and the answer of the noble earl opposite as to the meaning of the section of the Act of 1870. He would content himself simply with observing that he thought the argument of Mr. Fish was entitled to a little more consideration than it had received at the hands of the noble earl. In conclusion, he had only to say that while the right of asylum was a right of which this country was justly proud, and while we most gladly welcomed political refugees to our shores, there was no good reason why we should welcome criminals in the ordinary sense or look upon them as anything but most unwelcome refugees. (Hear, hear.)

The LORD CHANCELLOR having remarked that the state of the House (there were only about a dozen peers present) did not give much encouragement to continue the conversation, and that more than one noble lord who had already spoken had retired without waiting to hear the answer to his arguments, went on to observe that there was a certain amount of inconvenience attending the way in which the subject had been brought on for discussion, inasmuch as no decided question had been raised. In the other House of Parliament he pointed out that Sir W. Harcourt had given notice of a motion to the effect that it was desirable to reconsider and amend the law relating to extradition with the view of providing more effectually for the execution of justice in the case of offences not being of a political character. That notice indicated that in the opinion of that hon. and learned gentleman the law as it now stood was insufficient and required alteration; but the argument of the noble earl that evening, was not that it was desirable to amend the law, but that the Government had incorrectly interpreted it in their dealings with the United States. Now, he was one of those who had long held that very considerable modifications in our law of extradition were desirable, although he did not mean at present to say a single word on the character of those modifications. That was a subject for negotiations, and he would on that occasion simply address himself to the law as it stood. [The noble and learned lord had proceeded thus far when he was seized with what apparently was a slight fit of coughing, which prevented him from going on with his speech, and he quitted the House, observing before he left that if it were thought desirable he would move the adjournment of the debate.]

Lord REDESDALE then took his seat on the woolsack, and after a few words from Lord SELBORNE expressive of his regret at the cause which had obliged the Lord Chancellor to retire from the House,

The debate was adjourned till tomorrow with a view to another day being then fixed upon for its resumption.

Dispatch No. 13, Fish to Pierrepont, dated August 2, 1876

A. No. 13. Department of State,
Washington, 2nd August 1876.

Edwards Pierrepont, Esquire,
&c., &c., &c.

Sir:

I have to acknowledge the receipt of your despatch No. 7, under date of 19th instant. The correspondence, respecting the extradition of Burley and of Caldwell is interesting—these cases were familiar to the Department, and are referred to in its recent correspondence on the extradition question—and the copies which you send are useful.

Your despatch is not accompanied by a copy of your reply to Lord Derby's *note of July 15*. You will please supply this deficiency. (See Personal Instructions Sect. VIII.)

I notice in your despatch that in speaking of your reply to Lord Derby's note asking whether you had no authority from your Government to undertake the negotiation of an extradition Treaty, you say, "to which I replied that I was not yet authorized to enter upon such negotiation."

It is feared, that if your reply is thus correctly represented, it may lead to a misapprehension on the part of the British Ministry. The position taken by the President, is that all negotiations respecting a renewal of Extradition arrangements between this Government and that of Great Britain are to be conducted here. This position and the reasons therefor are stated in Instruction No. 6, addressed to you under the date of the 21st of June last.

If your note was calculated to give rise to any expectation that authority might thereafter be given to you to enter upon the negotiation in London, it is desirable that such expectation be removed and that Lord Derby be made acquainted with the expectation of this Government that if

any negotiation on the question of Extradition is to take place, that it be had here.

I am, Sir, Your obedient servant,

HAMILTON FISH.

Dispatch from Pierrepont to Fish, dated August 4, 1876

No. 19 Legation of the United States,
London, August 4th, 1876.

Hon'ble Hamilton Fish,
Secretary of State,
Washington, D. C.

Sir:

I have the honor to inform you that the Extradition debate was ended in the House of Lords last night. In the morning the Earl of Shrewsburys whose acquantance I had recently made, called upon me and showed a notice from the "whip" which showed that the Lord Chancellor was sure to speak. I went to the House of Lords at five o'clock and Lord Selborne there told me that the debate would certainly come on.

The Government benches were pretty full and the Opposition benches were very thin. The Lord Chancellor spoke for nearly two hours. I had heard him talk at dinner but I had not heard him speak at any length before. His voice is good, his statement clear; he never hesitates or repeats; his method is excellent and his style is quite impressive. He was listened to with profound attention and he was repeatedly cheered by the Government side.

The public sentiment, as indicated by the Press and the Clubs, was so much on our side that the Government thought it well to make a great effort and the debate was postponed until the Lord Chancellor was quite ready.

Lord Selborne replied in an able speech—less earnest than the Lord Chancellor's but effective as you will see. 1/19 2/19

I enclose a report of both the speeches and also the Editorial from the Times.

As I have before written there is an inclination to support the Government if possible and they have put forward their ablest man and given him ample time.

I have taken much pains to learn the real strength of the two parties in England and I am satisfied that at pres-

ent the Conservative party is very strong and the opposition is very weak. I find the general public sentiment still with us on the Extradition question.

Lord Granville, as you will see by the report withdrew his motion.

I have the honor to be with great respect

Your Ob't Serv't,

EDWARDS PIERREPONT,

List of Enclosures.

1. Report in the Times newspaper of the Debate upon Extradition in the House of Lords August 3, 1876.
2. Editorial comments in the Times on the same.

THE TIMES, FRIDAY, AUGUST 4, 1876.

EXTRADITION TREATIES.

The adjourned debate, on the motion of Earl Granville,—"That an humble address be presented to Her Majesty for further correspondence respective Extradition," was resumed by

The LORD CHANCELLOR, who said,—I have to express my great obligation to your lordships for your indulgence in permitting me to-night to resume the discussion of this question. I shall endeavour to show my gratitude by compressing as far as the importance of the subject will permit, the remarks I have to make. I think I shall make my observations more distinct if I remind your lordships at the outset that there are connected with this subject two questions which are perfectly separate the one from the other. The first is whether there ought to be a new Treaty made between this country and the United States and what should be the character of that Treaty, and the other is whether Her Majesty's Government, in executing the Treaty which has existed and the powers which they possess, have properly interpreted their duty. The importance of keeping these two questions distinct was clearly manifested during the debate the other night. The noble lord who introduced the motion stated very fairly that he did not propose to enter into the negotiations for a new Treaty, but he would confine himself entirely to what had already occurred; and your lordships will recollect that a noble earl who is not now present (Earl Grey) spoke also upon the general question as to what, according to his judgment, ought to be the character of the extradition arrangements between two such

countries as great Britain and the United States. Upon one of these questions I do not propose to say more than a word. The subject of the arrangements to be made for the future is one which may now be taken to be under negotiation. Her Majesty's Government have informed the Government of the United States that they are prepared to enter upon that negotiation without any bias and without any prejudice arising from the correspondence which has passed. I am perfectly willing to confess there are many points in respect of which the arrangements between the two countries may be improved; and I think I shall have the assent of all your lordships when I say this was a question upon which the interests of Great Britain and of the United States are not only not antagonistic, but that they are absolutely identical. I have heard some calculations made as to the relative advantages which an Extradition Treaty bestowed upon the two countries; but I cannot see any difference whatever between the advantages to one country and to the other. I have seen it stated that you ought to take into account and compare the probable number of criminals which each country will have to demand back from the other. If we were able to ascertain that one would require the surrender of 10 and the other the surrender of 100, still I should maintain that the interests of the two countries are entirely identical. Of course it is the interest of a country to obtain the surrender of a criminal and to put him on trial for the offence which he has committed; but I maintain that it is equally the interest of the country of which that criminal, if he be a criminal, has made an asylum to get rid of his presence. The country in which he has taken refuge is in this position—it cannot try him for the offence he has committed abroad because it has been committed out of its jurisdiction, and it cannot have his presence without danger of the recurrence of the crime in consequence of which he has been obliged to take refuge. I now come to what really is the grave question raised by the noble earl, I mean the course which the Government has taken in the late negociations with the United States. It is extremely important to bear in mind, in a matter of this kind, what the position of the Government is. *Prima facie* every person who takes refuge in this country, who makes this country an asylum, has a right to remain in it and cannot be removed from it. The Government of this country is made by the Legislature the depositary or trustees of certain powers, by the exercise of which that individual may be handed over to the country from which he has originally come. It is the duty of the Government to

construe those powers accurately, and to execute them up to the letter of their power, and the Government have no authority to go one jot beyond the power which the Legislature has entrusted to them. What the powers are which are entrusted to the Government must of course be determined by looking at the nature of the authority which the Government has received, and it is upon the construction of that authority that the difference in the present instance has arisen. Let me remind your lordships what are the two constructions which have been placed on the powers given to the Government of this country with reference to the extradition of persons alleged to be criminals. The construction which was placed by the noble earl upon the power of the Government is this—the noble earl, adopting the argument of the Government of the United States, contends that there are certain crimes for any one of which the Government of the United States may refuse the surrender of a criminal who is within this country. The noble earl says the person must be accused of the crime, and evidence must be given which would justify his committal in this country, and if such evidence be given he is to be handed over to the United States; but once he is handed over to the United States the noble earl contends it is in the power of the United States and the Courts of that country, provided they go through the form of trying him in the first instance for the offence for which he is surrendered, to try him afterwards for any offence greater or smaller which may be alleged against him. That is the construction which the noble earl puts upon the duty and the authority of the Government of this country. On the other hand, Her Majesty's Government put this construction on their authority—they say they are ready to entertain the demand for the extradition of any person alleged to have committed any of the offences mentioned in the Treaty; they are ready to hear evidence of the criminality of the person; and if the evidence amounts to that which would justify a magistrate in committing that person for trial in this country, he is to be handed over to the Government and the Courts of the United States, but he is to be handed over to be tried for that offence only, and if acquitted of that offence he is not to be tried for any other offence he may have committed. That is the issue between us. It appears to me a very simple one, and I think I shall be able to satisfy your lordships, not by any legal arguments, but by the application of common sense to the construction of common words, that the construction which Her Majesty's Government have placed on their duty is the true and correct construction.

My lords, before I come to the Treaty which exists between this country and the United States I desire to make a few observations. The noble earl (Granville) said the other night with great accuracy that the extradition of criminals or alleged criminals was founded upon the comity of nations. Extradition is not an obligation created by Treaty. It has been regulated and moulded by certain countries through the medium of Treaties, but properly speaking it is founded upon the comity of nations, upon principles higher and broader than ever can be laid down in any Treaty. My lords, it so happens that Great Britain and the United States have been rather lagging behind on the subject of Extradition. Extradition was known for years before any treaty existed between this country and the United States; and when a treaty came to be made between this country and the United States it was made in order to supplement the power of the Executive Government, and not for the purpose of introducing any greater laxity into the general principle of extradition. Now, my lords, what are the rules laid down with regard to Extradition in those countries where it has prevailed much longer than in this country and the United States? Nay, what is the cardinal rule on the subject of Extradition? I have consulted the great jurists who have written on this subject on the Continent, and I will now lay before your lordships what has been said by one of them who wrote not very far distant from the time when the treaty was made between this country and the United States. I take the treatise of Fælix on Private International Law, in which an entire chapter is devoted to the subject of Extradition. The author enumerates all the treaties which at the time he wrote existed between the different countries on the Continent; but he lays down as higher and older than any of the provisions in any of those treaties certain general rules which he says are implied in the whole question of Extradition, and which govern it in all countries at all times. And this is one of his general rules:—

"The person who is surrendered cannot be prosecuted or condemned except for the crime in respect to which his extradition has been obtained."

(Hear.) My lords, is there any doubt about the meaning of those words? The rule is not that he must be tried first for the crime on which he has been surrendered, and that then he may be tried for any other, but that he must be tried for the crime on which he has been surrendered, and for that crime only. And, my lords, what is the practice

observed in France? The Minister of Justice in a circular dated the 15th of April, 1841, lays down the following rules on the subject of Extradition:—

"The extradition declares the offence which leads to it, and this offence alone ought to be inquired into. So that if during the prosecution for the crime which has led to the extradition there should arise the evidence of a new crime, a new demand of extradition ought to be made."

But, my lords, that is not all. In a book with which some of your lordships are well acquainted, Dalloy's "Jurisprudence," I find a remarkable case in point which occurred between France and Geneva. A man of the name of Dermenon had been surrendered for trial for fraudulent bankruptcy. He was acquitted on that charge, but there was another against him for which he had not been surrendered. Then this is what I find:—

"The Procureur-Général to the Royal Court of Dijon asks whether he must be brought before the Tribunal of Correctional Police of that city or sent back to Geneva to be placed at the disposal of the Government which has surrendered him. The Keeper of the Seals thinks that the latter alternative should be adopted. The letter written by the Minister of the Interior to the Prefect of the Côte d'Or to inform him of this decision runs thus:—'It is only as accused of the crime of fraudulent bankruptcy that Dermenon has been delivered up to France by the Canton of Geneva. He is now purged of that charge by the decree of acquittal. Dermenon is therefore in the same position as if only a misdemeanor had been laid to his charge. It is clear that in that case his extradition could not have been obtained. It follows that we cannot take advantage of his having been given up to the French authorities upon a different ground to try him for acts which have not and could never have been the grounds of his extradition. The Minister of Justice has consequently directed the Procureur-Général to place Dermenon at your disposal, and I hasten, for my part, to request you to have him conducted immediately to the frontier, where he should be placed once more in the hands of the Genevese authorities.'"

That is pretty strong as to the principle on which France proceeded—a principle which forms the foundation of extradition and does not depend on the mere wording of any Treaty whatever. But is France alone in this matter? I turn to a jurist of Holland, Kluit, who has written a very interesting treatise on the surrender of fugitives, in which he says:—

"Is it lawful to punish the fugitive for any other crime than that for which he has been surrendered? The request for the surrender of a criminal is generally accompanied by a statement of the grounds on which it is made. The State in which he has taken refuge ought not to surrender him until those grounds have been made clear to it; in other words, it should ascertain whether the crime committed is of a character to justify his surrender. In truth, the criminal by his flight to another State becomes (although but for a time) the subject of the supreme power of that State, and immediately enjoys the protection and guardianship of that State. From that guardianship he cannot be forcibly taken except under a special agreement, the terms of which, we presume, certainly do not extend further than to those very grounds on which the surrender was demanded and granted. Therefore, if a State were to demand the extradition of a fugitive for a given crime, and then, letting the charge of this crime drop, were to bring him to trial and inflict punishment on him for some other crime committed by him, the mutual confidence existing between the two nations would be seriously impaired by an extradition demanded in so dishonest and underhand a manner. The surrendering State could not, indeed, though rightly maintaining that it had suffered an injury, at once do anything to prevent the perpetration of this fraud,—for it would be absurd to fly at once to arms—yet it appears that it could fairly demand, through the medium of its Ministers representing it in the country of the other State, that the injury should be repaired—as, for example, by sending back the surrendered criminal; and in such a case it will be quite fair that all extradition shall be consistently refused to the offending State for the future, so that no handle may be given to unjust persecutions. . . . . And even if it be not fraud, but only carelessness, that leads a State, after demanding and obtaining the surrender of a criminal, to bring him to trial on some other charge than that for which he was surrendered, such a proceeding should not on that account be passed over. The surrendering State gave up the criminal on consideration of the grounds stated, not of any different grounds. It may be alleged that it was a fair presumption and argument to say that the surrendering State would have been likely to surrender with much greater willingness a man accused of more crimes than one than a man accused of one only. But, on the other hand, it is a fair observation to make that that State might have declined to grant the surrender had it known that the other State would bring the criminal to trial on such or such a

charge. Because it surrendered a man accused of incendiarism or murder, it must not be presumed that it would be equally willing to surrender one for political reasons, for persecution on account of religions, or for any trivial infringement of the law."

Finally I turn to a German writer, Heffter, who states:—

"The individual whose extradition has been granted cannot be prosecuted nor tried for any crime except that for which the extradition has been obtained. To act in any other way, and to cause him to be tried for other crimes or misdemeanours, would be to violate the mutual principle of asylum and the silent clause contained by implication in every extradition."

Now, my lords, I think these authorities, and they might be multiplied, will satisfy your lordships that apart altogether from the wording of Treaties, there is a silent and implied condition in extradition that the crime for which the surrender of a man is asked must be specified, and that it is for that crime alone that he must be tried. I am absolutely unaware of any authority who has ever written the other way. So much for the general principle. Until I hear the contrary, I think I am entitled to ask your lordships to hold with me that it is the general principle of extradition that a man is to be tried only for the offence for which he is surrendered. I now come to the Treaty of 1842 and to the British Act of Parliament which gave effect to it. I take the treaty first. What does it provide? It embraces certain offences—namely, murder, assaults and attempts to murder, forgery, the uttering of forged paper, piracy, robbery, and arson. It takes those seven offences, and authorizes a demand and a surrender by way of extradition of any person who is accused of one of those offences provided—I speak of course with regard to this country—the evidence given amounts to that which, according to British law, would justify a person's being committed in this country for trial. I ask what is the reason why seven offences out of the whole catalogue of crime are singled out, and why, also, there is this provision made that the evidence given must be such as would show a *prima facie* criminality according to British law? What is the theory which would explain why this provision was made in the treaty? I listened with some anxiety to hear whether the noble earl had any theory on this point. I have heard two theories—one suggested by the noble earl and the other suggested elsewhere. I have seen it said that the reason why the treaty provides

that this evidence of criminality according to British law is to be given merely to guard against arbitrary arrests. But that is no answer at all, because it does not explain the reason why seven crimes are singled out. If the only object was to guard against arbitrary arrest, it would be sufficient to say that a man may be surrendered for any crime whatever provided there is *primâ facie* evidence according to British law. But the suggestion of the noble earl is that those seven offences only are taken because the object was not to invoke that cumbrous administrative machinery of the two countries and put it in motion for anything except large and considerable crimes. But, I ask him, are these seven the only large and considerable crimes? What does the noble earl say to embezzlement, or to obtaining money under false pretences, or to manslaughter, or to rape, or to abduction—and I might name many others? None of these are mentioned in the Treaty. No provision whatever is made for them; and therefore, they being as considerable as the crimes that are mentioned, it cannot be that the object was to avoid the trouble of putting this cumbrous machinery in motion for insignificant offences. Now, I venture to give my explanation. The reason why the Treaty was framed in this way is a very simple one. It is that these seven offences are agreed upon between the two countries as the *delicta majora*, about which there could be no dispute, no controversy as to whether they trench on political considerations or not. They are singled out and taken as the only crimes for which extradition is permitted; and evidence is to be given which shall show that the particular crime has been *primâ facie* committed according to British law in order that this country when it surrenders a person who is alleged to be a criminal may know beforehand what is the crime, and the only crime, for which he is to be tried, and what is the character of that state of facts which is said to lead up to and indicate that it has been committed. And the moment that you pass from the offences named in the treaty and the evidence in support of those offences, and say that afterwards the person surrendered may be tried for any other offence, you absolutely reduce to silence the whole of the provisions in the treaty. For what is the object of specifying one offence, and being made the judge of the evidence with regard to it, if after his trial for it, which may be a mere formality and result in an acquittal, and show that he ought never to have been accused of that offence at all, he may be tried in the country to which he is surrendered for any other offence they may please to lay at his door? (Hear, hear.) I may here quote one of the

highest authorities in dealing with the subject—viz., the President of the United States. President Tyler communicated his treaty by a Message to Congress. In a Message to the Senate he gave this explanation of the character of the treaty. He said:—

"The article on the subject in the proposed treaty is carefully confined to such offences as all mankind agree to regard as heinous, and destructive of the security of life and property. In this careful and specific enumeration of crimes the object has been to exclude all political offences or criminal charges arising from wars or intestine commotions. Treason, misprision of treason, libels, desertion from military service, and other offences of similar character are excluded."

(Hear, hear.) What is the use of excluding them if, after a surrender for any one of the offences named, the person may be tried for these other offences? Here is the Message of the President of the United States explaining the treaty that was entered into, and explaining it in a sense which at once sweeps away the whole of the theory that a person can be tried for anything except what are called the crimes specifically enumerated, because if he could be tried for any one of the other offences the guarantee and safeguard on which President Tyler relied would be entirely removed. So much for the treaty. As far as this country is concerned, it does not rest merely on the treaty. I find that Lord Ashburton, who negotiated the treaty, on the 9th of August, 1842, wrote to Mr. Webster and told him—what all your lordships know—that, although the negotiators had agreed to this treaty, it could have no force against this country, except by the authority of Parliament, and therefore that the authority of Parliament must be obtained. Therefore, whatever terms the Parliament of this country imposed in the Act by which they gave their assent to the treaty became part of the treaty and govern its execution. What does the Act of Parliament which was passed in 1843 say? Your lordships will observe that the form was this—that Parliament had to give to the Executive of this country power, which otherwise the Executive would not possess, of handing over the persons who were surrendered. No Secretary of State could issue a warrant or arrest any person in this country to be handed over to the United States, except by the authority of Parliament, and therefore Parliament had to ratify the treaty and give authority for this particular act to be done. What is the language in which

Parliament gave this authority? This is the third section of the Act, and it does not require a lawyer to construe it. It says:—

"Upon the certificate of a justice of the peace that the supposed offender has been committed to gaol, it shall be lawful for one of Her Majesty's principal Secretaries of State . . . by warrant under his hand and seal to order the person so committed to be delivered to such person or persons as shall be authorized in the name of the United States to receive the person so committed and to convey such person to the territories of the said United States." (What for?—to be tried for all offences whatsoever? No, but) "to be tried for the crime of which such person shall be so accused."

That is the authority which Parliament has given to the Secretary of State. Parliament has given no authority to any Secretary of State to hand over any man within the asylum of this country to be tried for all offences whatsoever. The authority, and the only authority, given to Her Majesty's Government is, after evidence given showing a *primâ facie* case of criminality as regards the particular offence, that of handing over a person to the United States to be tried for the crime of which such person shall be so accused. It is sometimes said that lawyers are given to special pleading. I am sorry to observe that the special pleading on this subject has not come from lawyers. I have seen it stated—and the argument of the noble lord the other night requires him to maintain this proposition—that because there are no negative words saying that he is not to be tried for any other offence, therefore he may be tried for any other offence. I should like to know, in regard to documents passing between man and man within this country, what would be thought of an argument like that. Suppose any one of your lordships handed over a sum of money to a trustee and told him it was handed to him that he might invest it in a particular security—Consols. If the trustee said, "You told me I was to invest the money in Consols, but you did not say I was to invest it in nothing else. If I have invested the money in Consols, I can then invest it in any other securities I please." What, I ask, would be thought of that doctrine? ("Hear, hear," and a laugh.) The words here are clear. The person is surrendered by the Act of Parliament to be tried for the offence of which he is accused, and so far as he is concerned, our duty is to protest against his being tried for any other offence.

But, my lords, I may go further, and refer to the circumstances under which the Act of 1843 was passed. The Act was not passed through Parliament in silence; it was fully debated in both Houses at the time. Those were the times when the members of the great Liberal Party were peculiarly sensitive about the liberties of those who had received the hospitality of this country; and they were careful that no power was given or should be exercised which might unduly endanger those liberties. I have read the speech of Lord Macaulay on the subject, which is contained in the reports of the proceedings of the other House of Parliament, and also that which was delivered by Lord Aberdeen in this House, both of which were directed against the criticisms to which the measure had been subjected. At that time slavery was an institution of the United States, and great apprehension was felt here that persons might be surrendered here for offences mentioned in the Treaty, and be subsequently tried in America for offences connected with their *status* as slaves, and those who were defending the Treaty in both Houses of Parliament took one by one the offences for which persons were to be surrendered, and asserted that none of them would allow any person to be put on his trial for an offence committed as a slave. But, my lords, if Lord Aberdeen in this House, and Sir R. Peel in the other, had adopted the construction placed upon the Treaty of the noble earl they would have said, "It is no use embarrassing yourselves about the effect of the particular offences named in the Treaty, because we candidly tell you that if once a man is surrendered under the Treaty he can be tried for any offence whatever, whether arising out of his *status* as a slave or not." My lords, had any Minister made such a statement as that in either Houses of Parliament in 1843 do your lordships suppose that this Treaty would ever have received the assent of Parliament? (Cheers.) But there is another matter which is of considerable importance in considering this case. The other night the noble earl objected to any reference being made to the American Act of Congress passed in 1848, stating that the Americans themselves were the proper judges of the construction to be put upon their own Act. That view might perhaps be open to criticism, inasmuch as the Act of Congress is practically a transcript of the English Act, and may fairly be taken to have the same meaning. I will not, however, enter into any debateable ground upon this question which I can avoid, and therefore I will pass over the point as to what construction should be placed upon the Act of Congress. I must, however, refer to an

American document which becomes of the utmost importance when we are construing the meaning to be placed upon the Treaty. I will ask your lordships to allow me to read the warrant under which the United States surrender a prisoner to us. It is to be found in pages 69 and 70 of the papers which have been laid before the House. This is the document which accompanies the prisoner when we receive him from the United States, and it contains the instructions which tell us what we are to do with him. The document is a very important one, and seems to my mind to be almost conclusive of the case. It is as follows:—

"Now, therefore, pursuant to the provisions of section 5,272 of the Revised Statutes of the United States, these presents are to require the United States' Marshal for the Eastern District of New York, or any other public officer or person having charge or custody of the aforesaid James Bowen, *alias* William Miller, to surrender and deliver him up to Adam Bligh, a constable of the united counties of Stormont, Dundas, and Glengarry, Canada, who has been authorized, in the name and on behalf of the British Government, by Her Majesty's Minister at this capital to receive him, or to any other person or persons who may in like manner be authorized, in the name or on behalf of the said Government to receive the said James Bowen, *alias* William Miller, to be tried for the crime of which he is accused."

Therefore we have on the one hand the British Parliament authorizing the Secretary of State to hand over the person to be surrendered from this country to be tried in the United States for the crime of which he is accused, and we have on the other the Government of the United States issuing their warrant for the handing over to the officer authorized by Her Majesty to receive him in the United States a prisoner to be tried for the crime of which he is accused. Both countries, therefore, use the same words, which can only fairly admit of one interpretation. (Cheers.) So much, therefore, for the general principles which regulate the system of extradition and for the documents which pass between the two countries, and which constitute the means by which it is carried into effect. The noble earl referred to a great many cases which have occurred since 1842, and said that he had got the evidence of public men and the evidence of witnesses which would show that the meaning which had always been placed upon the Treaty was different to that for which we contend. I can very shortly indeed put your lordships in possession of all that appears

to me to be material with regard to the cases that have occurred. By far the greater number of the cases cited by the noble earl I put aside altogether as irrelevant. In that class of cases to which I refer the prisoners who had been surrendered on one charge and who were being tried upon another themselves attempted to raise the defence that they could not be tried for an offence different from that for which they had been surrendered. Such cases certainly have no application whatever to the present question, because nothing can be more clear than that a prisoner himself has no right to raise such a defence. Even in France where, as I have shown your lordships, the law and the practice of extradition goes far beyond that which prevails in this country and in the United States, a prisoner is not permitted to set up such a defence for the clear reason that he is within the jurisdiction of the Court which has the authority to try him for the offence of which he is charged, and that whether he ought to be tried for an offence other than that for which he has been surrendered is a matter of diplomacy between the two countries, and not of question between the prisoner and the Court before which he is being tried. That circumstance therefore, disposes of by far the larger number of cases referred to by the noble earl and by Mr. Fish. The cases really in point are only three in number. One is that of Heilbron, in which if the government of this country had ever known and had approved what was done it would not have been very creditable to this country. I will tell your lordships what happened in that case. Heilbron was a man who was brought up in New York under a proceeding of extradition for the purpose of being sent home to this country in order to be tried here. He was charged in New York with robbery, and he grounded his defence upon the circumstance that the facts proved disclosed not robbery but embezzlement, which was not an offence for which he could be surrendered under the Treaty. The Commissioner before whom the case was heard, decided that the offence of which he was charged was robbery, and the man was surrendered and was sent over to this country for trial, and I may mention that the prosecution was conducted not by the Crown but privately. When he was tried here this actually occurred—the Judge at once said that the facts showed that the offence committed was embezzlement and not robbery, and the man was tried and sentenced for the former offence, for which he ought not to have been surrendered under the terms of the Treaty. That would not have been very creditable to the Government if they had ever heard of it; but

the Government never did hear of it. It was never brought under their notice at the time of the prosecution, or until it was mentioned in the Committee of the other House in 1868. That was the case of Heilbron. The other two cases were the cases of Burley and Caldwell. As to these cases it appears that the Law Officers of the day were consulted, and no person can speak with greater respect than I do of the Law Officers at these two particular dates. But I am bound to say that I should have liked to see the reasons assigned by the Law Officers for the opinions said to have been given by them, and I should have liked to know whether the attention of the Law Officers was called to the principles of extradition to which I have referred, as well as to the other documents I have mentioned. Even if I were unable to agree with what appears to have been the opinion of the Law Officers of the Crown, if the result had been communicated to the American Government, and they had been told, "These are the principles upon which the British Government acted," I could understand the argument *ad hominem* now urged on behalf of the American Government—that this country should not depart from the solemn determination then arrived at. But, so far from that being the case, the American Government were never informed of the views said to have been entertained by the Law Officers of the Crown; and, moreover, in the outset of the late correspondence with the American Government those two cases were not referred to at all. The case of Burley was a singular one. It occurred in 1865. Burley had been surrendered to the United States from Canada for robbery. His friends in this country apprehended that he was going to be tried for piracy, and they appealed to the Foreign Office, asking that Her Majesty's Government would so far exert their good offices on his behalf as to secure "that he may not be tried on any other charge than that on which the claim was made for his extradition." The Foreign Office thereupon answered the appeal, which was made by the hon. member for Glasgow, Mr. Dalglish, who was told that Lord Russell had addressed to Her Majesty's representative at Washington such instructions as the case admits of." Now, observe that were the instructions sent to our Chargé d'Affaires, and what was the communication made by him to the American Minister. This is the instruction sent to Mr. Burnley, then our Chargé d'Affaires:—

"I have to state to you that, having considered this application in communication with the proper law advisers of the Crown, Her Majesty's Government are of opinion

that if the United States' Government, having obtained the extradition of Burley on the charge of robbery, do not put him on his trial upon this charge, but upon another—viz., piracy (which, if it had been made before the Canadian authorities they might have held not sufficiently established to warrant his extradition), this would be a breach of good faith against which Her Majesty's Government might justly remonstrate. If, however, the United States' Government does *bona fide* put Burley on his trial for the offence in respect to which he was given up, it seems to Her Majesty's Government that it would be difficult to question the right of that Government to put him upon his trial for piracy also, or any other offence which he may be accused of having committed within their territory, whether such an offence was or was not a ground of extradition or even within the Treaty."

This is a large view, and one with which I cannot concur. But now let us see what was the communication to Mr. Seward, founded upon this despatch. Mr. Burnley wrote to Mr. Seward:—

"Her Majesty's Government having considered this application, are of opinion that if the United States' Government, having obtained the extradition on the charge of robbery, do not put him on his trial upon this charge, but upon another—viz., piracy, which, if it had been made before the Canadian authorities, they might have held not sufficiently established to warrant his extradition, this would be a breach of good faith, against which Her Majesty's Government might justly remonstrate. Her Majesty's Government are, therefore, willing, should the grounds upon which Burley is to be tried take the above turn, to comply so far with the application of Mr. Burley, sen., as to instruct me to protest against any attempt to change the ground of accusation upon which Burley was surrendered in pursuance of the Treaty."

Now if I had been Mr. Seward, receiving this despatch, without knowing what was behind, I should have said, "This is an expostulation with me against allowing a man to be tried for any offence but that on which he was surrendered." Mr. Seward, in fact, did so understand it, and thus replied:—

"The Honourable the Attorney-General informs me that it is his purpose to bring the offender to trial in the courts of the States of Ohio and Michigan for the crimes committed by him against the municipal laws of those

States—namely, robbery and assault with intent to commit murder. He was delivered up by the Canadian authorities upon a requisition which was based upon charges of those crimes, and also upon a charge of piracy" (This, I believe, was a mistake), "which is triable, not by State Courts, but by the Courts of the United States. I am not prepared to admit the principle claimed in the protest of Her Majesty's Government, that the offender could not legally be tried for the crime of piracy under the circumstances of the case." (Mr. Seward thus shows that he considers it a protest against the principle of trying a prisoner for any other crime than that upon which he has been surrendered.) "Nevertheless, the question raised upon it has become an abstraction, as it is at present the purpose of the Government to bring him to trial for the crimes against municipal law only."

(Hear, hear.) These are the crimes upon which Mr. Seward says Burley was surrendered; and therefore, says Mr. Seward, I do not admit your protest, which I believe to be a protest against trying a man for any different crime from that for which he has been surrendered; but the point is now an abstraction, for we do not mean to do so. (Hear, hear.) That is the case of Burley. The case of Caldwell is a lesson to us as to the caution which should be exercised by the Government in these matters. Caldwell was handed over from Canada to the United States in 1871, and was surrendered for forgery. He appealed to the Canadian Government, and through them to the Home Government, upon this ground—that he was going to be tried for a different offence—namely, bribing an officer of Customs. Now, it is quite true that in 1871, I do not know for what reason,—possibly because there were then many other matters in controversy with the United States, and it was not thought desirable to add to the number—there is a dispatch from the Colonial Office stating that there does not seem to be any ground for interference. Lord Kimberley adds:—

"Her Majesty's Government are further advised that there is nothing in the Convention which would preclude the indictment of the petitioner in the United States for an additional offence which is not enumerated in the Convention, so long as such proceedings were not substituted for proceedings against him on the charge by reason of which he was surrendered."

What happened? The case is cited in a book which Mr. Fish says is of great authority,—"Clark on Extradition"—and, as I say, is a lesson to us of the results of laxity in these matters. Caldwell never was tried for the offence for which he was surrendered, and he was tried for the offence of bribing an officer of Customs. My lords, I think that the less said about the case of Caldwell the better. (Hear, hear.) This disposes of all the cases which it is necessary to notice. I now come to what the noble earl calls the declarations made by public men upon this subject. I heard what was said in the House of Commons in 1866 by my noble friend the then Secretary for Foreign Affairs, being myself at that time Attorney-General; and I only mention the fact now for the purpose of showing that in 1866, and after the case of Burley had occurred, whatever the construction put upon it, a distinct and clear declaration was made in the face of the country in the other House of Parliament of what the Foreign Office conceived to be the position of the extradition question as regards the trial for criminal offences. The noble earl says the words used on that occasion were words used in the heat of debate. Nothing can be more inaccurate. There was no heat of debate. What occurred was this: A Bill was passing through the other House on the subject of extradition. It was earnestly criticized, and an amendment was moved requiring that, before any person was given up, the country to which he was surrendered should be asked for an assurance that he should not be tried for any other offence, except that for which he was surrendered. My noble friend (Lord Derby) objected to that amendment. We said to the House of Commons, "In the first place, if it is included in the Treaty, it is not necessary to take a pledge from the other country on the subject, and in the second place, as we understand the law, this country would have a right to complain of any other country which, after a prisoner had been surrendered, should try that prisoner for any offence other than that for which he was surrendered." This is what my noble friend said, as the head of the Foreign Office at that time, and speaking in his position as Secretary of State:—

"As for the proposal that the French Government should be required to enter into an undertaking that they would not try any person for any offence other than that for which he had been given up, he thought that that would be a very feeble protection indeed; for, assuming for the sake of argument that the French could act in the manner

suggested—and he really begged pardon for assuming it, even for that purpose—he could only say that a Power which could act in such a manner would not be bound by an undertaking of the kind proposed."

What I said as Attorney-General was that,—

"With respect to the latter part of the hon. member's amendment, which required that the person should not be tried for any offence but that for which he had been given up, we should certainly have a well-founded complaint against any country that demanded a man to be given up for one offence and then proceeded to try and punish him for another."

(Hear, hear.) So much, my lords, for the declaration which was made in the face of the Parliament of this country, and acted upon in 1866 in the other House of Parliament, where the amendment was withdrawn in consequence of that declaration. The papers with regard to Burley and Caldwell were not exhibited to Parliament, but this was a declaration made in the face of Parliament, and about which there could be no mistake. The opinion of the late Sir Thomas Henry, whose loss we all deplore, was clear that the course taken by Her Majesty's Government was the course required by the practice and by the documents in the case. The next authority the noble earl refers to is Mr. Mullens, who is described by Mr. Fish as the Solicitor-General for England. (A laugh) That, of course, is a mistake; but at all events Mr. Mullens is a most respectable solicitor. And what is his opinion as to the propriety of trying prisoners for offences other than those for which they were given up? Sir Robert Collier asked him this question:—

"Supposing a man is given up, is it your opinion that he should not be triable for any quite different offence, or that he should only be tried for that offence, and then sent back again, at all events, and not put upon his trial for any other?"

Mr. Mullens replied:—

"I think he should only be triable for the offence named in the extradition warrant, or for any other offence named in the Treaty arising out of the same facts."

That is a very different thing from what is contended for now. (Hear, hear.) Sir R. Collier next asked:—

"Assuming this case, that a man has committed murder in this country and afterwards larceny and escapes to

France, and that he is sent over here and tried for larceny; and assuming that he is acquitted on that charge, are we to let him go, or are we to try him for murder, as we have him here?"

Mr. Mullens answered:—

"I think we should not let him go, but we should get the consent of the Government which gave him up before we tried him for murder."

Who is the next authority appealed to by the noble earl? Lord Hammond, of whom I desire to speak with the greatest respect and who was then Under-Secretary for Foreign Affairs, came to be examined on the matter, and he appears to have given evidence which was very far indeed from being in favour of the view taken by the noble earl. Indeed, his evidence was very remarkable. He was asked on the first day of his examination whether he had any recollection of the demands made in respect to trials for different crimes, and he said:—

"I cannot remember any. There was a case, but I do not think that it was a case of murder, connected with the Canadian troubles. A man fled to Canada, and the question was whether the man should be given up; and the further question then arose whether, if he was given up, he should be triable for any other offence. I think that it was ruled that if he was *bona fide* tried for the crime for which he was given up he might be tried for another offence afterwards."

Then he was asked:—

"Have you any record or minute of the particulars of this case you are now alluding to?"

He replied:—

"I should think that probably the Law Officers' opinion was taken upon it, but that could not be given to the Committee."

The witness added that he would see whether he could get any particulars of that case. On the second day of his examination Mr. Hammond said the case was that of Burley, and he described just as I have done this evening how that case arose. He was asked:—

"Do you mention this case to show that a man can possibly be tried for another offence than that for which he was given up?—I think the questions led to that point. But does this case decide the point either one way or the

other?—No; only that we admit in this country that if a man is *bona fide* tried for the offence for which he was given up, there is nothing to prevent his being subsequently tried for another offence, either antecedently committed or not. Did we make any demand upon the American Government after we had learnt that the man had been acquitted upon the first charge?—The man was not actually acquitted, because the jury disagreed and he was held over for trial another time. Then we never made any further inquiry about him?—No."

Mr. Hammond also said it would be very troublesome, if, supposing a man were given up under an Extradition Treaty, we were to instruct our Minister at the Court of the country to which he was given up to keep his eye upon the case and to ascertain what became of the man. And then came this remarkable answer which I suppose expresses Lord Hammond's own opinion on the subject. After remarking that there is nothing in our Treaties to prevent a man being given up even for political offences, he said:—

"In dealing with foreign nations, we can only go by our Treaty relations. If you ask me what is my own feeling on the subject, I should say it would be a great breach of faith and morality on the part of a foreign Government if, after having tried a man for the offence for which he was given up and having failed in convicting him of that offence, they should then put him upon his trial for a political offence, knowing well that if we had been aware that there was a political charge in the background we should never have given him up."

(Hear, hear.) Let me, now, substitute for "political offence" any offence which is not the subject of extradition. Would not a foreign Government know perfectly well that if we had been asked to give up a man for another offence we should not have done so, and does not Lord Hammond's reasoning, therefore, apply just as much to such an offence as it does to a political offence? (Hear, hear.) I have, I trust, satisfied your lordships that on the general principles of extradition and on the wording of our Treaty, of the Act of Parliament of 1843 and of the American warrant the course laid down for the Government was a clear and distinct one, and that we could not have taken any other course. And now let me say a few words about political offences. In the Treaty with the United States of America there is not a word about political offences. If the noble lord's construction be the right

one, and if a person handed over can be tried for any other offence besides that for which he was handed over, there is nothing in the Treaty which prevents his being tried for a political offence. I heard with great interest and some surprise the argument of Earl Grey on this subject the other night. Earl Grey was very bold indeed. He said people in this country are far too thin-skinned in regard to political offences, that political offences were very serious things, and that the men who committed them ought to be given up just like other offenders. Further the noble earl said that if this were not the view of the people of this country, they ought to be taught not to regard political offences as they do now. I know the boldness of the noble earl, and I am sure that if anyone is competent to instruct public opinion on this subject it is himself. But I do not wish him to be successful, and I should be very much surprised if he were successful. (Hear, hear.) I believe the people of England have perfectly made up their mind on this subject. I believe they will not consent to deliver up persons for political offences. (Hear, hear.) Whatever may be the form of Treaty or Act of Parliament, they will take care that no persons are delivered up for political offences. But if the construction contended for by the United States and by the noble earl be correct, we have no security whatever against the surrender of political offenders under this Treaty. (Hear, hear.) If it is in the power of another country, after trying a prisoner for the offence for which he was surrendered, to try him for another offence, that other offence might involve political considerations. There are two principles which are perfectly clear. The first is that no man shall be surrendered for a political offence; the other is that this country itself shall be the judge whether an offence is political or not. (Cheers.) Even inside of our own country differences of opinion on that point constantly arise, and some persons think an offence is political which others do not regard as such. This is at all events a point which we will not leave to the judgment of another country. We must judge of it ourselves, and we cannot do so unless we know what is the offence or what are the offences for which the surrendered criminal is to be tried. (Hear.) My lords, what security did the Minister of the United States wish for in this matter? Mr. Fish says that he never desired to have a criminal surrendered for a political offence, but in the very same despatch in which he says so he tells us that as to all offences against the law of the States as distin-

guished from Federal offences, the Government of the United States—with which observe alone we have the power of communicating—is powerless. They cannot control the prosecution in such cases, they cannot order it to be suspended—nay, more, if a man be convicted the President of the United States cannot pardon him. The security of which Mr. Fish speaks is, therefore, no security at all. But I would appeal from Mr. Fish to President Tyler, who says, in effect, "Here is the Article in the Treaty; scan it over. In the careful enumeration of crimes which you see there the object has been to exclude all political offences." (Hear, hear.) I wish, in the next place, my lords, to say a word as to a misapprehension which has arisen with respect to the Act of 1870. I have not up to this moment said a word about that Act; but I must now venture to correct what fell from the noble earl who brought forward this subject on that point. The noble earl said that we at first relied upon the Act of 1870, and that then we gave it up. But we have not given it up; and I wish it to be distinctly understood, so far as the Government are concerned, that we are disposed to agree entirely with the view of the United States Government, that an Act of Parliament passed in this country in 1870 cannot alter the terms of a Treaty made in 1842. But the Act might, whether by oversight or not, have imposed shackles and impediments on the Executive of a country in dealing with a prisoner whose surrender was demanded. Whether it has that effect or not it is difficult to say, because that depends upon the construction of a clause which I am bound to tell your lordships honestly, after the best consideration I could give it, is absolutely, and utterly unintelligible to my mind. ("Hear," and a laugh.) I may add that upon the only occasion when it came under the notice of one of our Courts of Law—the Court of Queen's Bench—all the Judges of that Court said they thought it was very doubtful what the Act meant, and recommended that it should on the earliest possible occasion be set right by the Legislature. It imposes in its present shape upon any Government a very great difficulty, because if a Government were to hand over a prisoner without taking those assurances which the Act requires, he might, for all I know, obtain his *Habeas Corpus* and be set at liberty. That is the purpose for which we referred to the Act of 1870. It is quite immaterial as regards the broader and higher ground of what our obligations are under the document of 1842. I will now say a word as to the policy of raising this question,

as the Government have felt themselves obliged to raise it at the present time! The noble earl said the other night that if we had let things go on, the great probability was that Lawrence would never have been tried for any other offence than that for which he was surrendered, and that we ought to have waited for some other occasion when if it were attempted to try a prisoner for a different offence we might have objected to the adoption of such a course.

Well, it was no doubt open to the Government to act in that way; but I think I can show your lordships that we were entirely justified in acting as we have done. Lawrence was in the United States handed over on a charge of forgery. There was an indictment found against him for some offence—I think against the Revenue Laws—which was not the subject of extradition. There was, therefore, a distinct and clear announcement on the part of the United States that it was intended to proceed against Lawrence for the two offences. Now, we were able to say that although we could not agree with the Government of the United States in the construction which they put upon the Treaty, we believed them to be perfectly sincere in contending that that was the view which they had always entertained, and that although we differed from them we were not prepared to make any serious demand upon them with regard to Lawrence. But how, my lords, would the matter stand on another occasion? Suppose we had gone on surrendering prisoner after prisoner to the United States, and that on some other occasion, perhaps with regard to some offence which excited more interest in this country, the United States had pursued the same course, and proposed to try a criminal for a different offence from that for which he had been surrendered. Suppose the demand then made which has been made now, the United States Government would turn round and say to us, "You knew perfectly well what our view of the Treaty was. We told you months ago, and with full notice you have gone on surrendering prisoners; we had, therefore, a right to assume that you were satisfied with the attitude which we had taken in the matter." Now, my lords, if there be one course more than another which would be likely to land us in complications and embarrassments it would be to leave open a sore of that kind to be dealt with on some future occasion in the case of some criminal with regard to whom a greater amount of public interest might have been aroused. (Hear, hear.) I should very much deprecate the discussion of a question of this importance with ref-

erence to the merits or demerits of any particular person whose surrender might be asked for by the United States. (Hear, hear.) The noble earl spoke the other night of those men as murderers, robbers, and rogues, and for all I know they may be what he describes them to be, although the tenderness of our law assumes that a person is innocent until he is proved to be guilty. But be that as it may, I can conceive nothing more dangerous than to bring down a great and important principle to the level of the merits or demerits of the individual in whose case that principle is brought in question. (Hear, hear.) That is not the way in which we act in this country with regard to our criminal law, on the great principles of which and on the cardinal rules of evidence we all depend for our lives and liberties. If in a particular case we were to overstrain or overthrow those great principles and those rules, the evil which we would have done would be sure to come back upon us in some great political prosecution, or some trial of a man against whom an unjust and violent prejudice happened to have arisen in the public mind. So it is with regard to this question of Extradition. There are some words which fell on the subject from a great master of history which are the words not only of a historian, but of a philosopher, and which I should like to read to your lordships. He says:—

"We are ever too ready, when it is the redress of our own injuries that is in question, to strain and compromise these general laws to which we have all to look for protection in the time of our adversity; and thus, when the day of trial comes, we find those laws no longer in existence." These are words of warning which I think we should do well to lay to our hearts at a time when there is little political excitement. I have now laid before your lordships as concisely as I could the principles on which the Government has acted; and I maintain that the obligations under which we acted not only justify the conduct which has been pursued, but rendered any other course of conduct absolutely impossible. (Loud cheers.)

Lord SELBORNE,—My lords, there are some points about which there will be universal agreement, and one is that it is our duty to discuss this question with the most perfect dispassionateness, with the greatest possible desire to be fair and candid, and certainly with the remembrance that any triumph of mere logic or ingenious argument, even though it be successful for a time, cannot compensate

for the mischief that may be done by the possible unsoundness of that argument. Your lordships must have observed that my noble friend who introduced the subject was careful to abstain from doing so in a tone or manner which could possibly bear the construction of a party attack or indicate a desire to magnify the errors, if errors there were, of Her Majesty's Government. I desire to imitate my noble friend in that respect, and at the outset I desire to make three acknowledgments to Her Majesty's Government, and so far to place the correctness or incorrectness of the course they have pursued beyond the possible limits of a party attack. First, it is undoubtedly true, as has been stated by the noble and learned lord on the woolsack, that when this question came incidentally under discussion in the other House in 1866, both the noble earl opposite, then and now Foreign Secretary, and my noble friend on the woolsack expressed views, the full effect of which, as now explained by them, may possibly not have been obvious to all who heard them, but entirely consistent with the arguments on which they now rely, and, I have no doubt whatever, intended by them at the time to be substantially in accordance with the views they now express. Whether they are right or wrong in the view they take of the rights and obligations of this country under the Treaty of 1842, no one is fairly entitled to call in question the consistency of their present and former opinions, or to deny they were justified, whatever may be the different views taken by others, in acting upon the opinions which they expressed in 1866. The next point to be borne in mind in favour of the Government is this—although undoubtedly the Act of 1870 could not alter the provisions of the treaty, which it professed to respect and keep alive, and must, I think, be supposed to have intended to do so; on the other hand, so far as the future policy of this country is concerned, the Act of 1870 did, in substance—as to the precise extent there is something to be said—point out to those who might afterwards have the negotiation of an Extradition Treaty on behalf of this country that line of policy which Her Majesty's Government had intended to pursue. Therefore, they were not only justified, but, sofar as general policy is concerned, so far as any action intended to be independent of the Treaty of 1842 is concerned, they were more than justified in acting upon the views and principles which Parliament had laid down as the general rule of the future. The third concession I desire to make to Her Majesty's Government—and it is really important with reference to

the position of this country—is that the Treaty of 1842 being terminable by either party at will and without notice, no question of a breach of international faith could fairly be raised, even if Her Majesty's Government were wrong in the construction which they put upon that treaty, if they gave notice of what their construction was, in what sense they understood their obligation, and that they should not interpret the treaty in any other sense. In form, no doubt, that is not a declaration of their choice and will to put an end to the treaty; but, having the power to do so without previous notice, it is manifest that an intimation of that sort was to all intents and purposes equivalent to a conditional declaration of an intention to put an end to it if there were continued difference of opinion as to its construction. In that state of things, I think no question of good faith as between nation and nation can be involved in the course Her Majesty's Government have taken, even if they have been wrong in the view they have taken of their obligation. I must take exception to two expressions used by my noble and learned friend. He spoke more than once of my noble friend (Earl Granville) having adopted the argument of the United States. It may be that the view we take is the same with that which has been taken by the United States, but I protest against it being said that we adopt the arguments of the United States. The arguments are our own, the interpretation that of the two Governments to which we belonged, and that for which I am responsible as the principal law adviser of the Crown in 1865. It is our own view—our own interpretation we are justifying, and not the argument of the United States, and I venture to think it can be shown informally to have been the view of the British Government, accepted by my noble friend and his colleagues in 1866, and during their present term of office. We may have been wrong, but believe ourselves to have been right, and having acted *bona fide* when the former Government took steps founded on our view, we had no option but to defend our own course, our own action, and our own opinions where they happen to be the same as those of the United States. With regard to the statement that our construction was that the country to which extradition was made was at liberty to try for any other offence, provided it "goes through the form" of trying for the first offence, my noble and learned friend will excuse me saying it is a piece of rhetoric hardly characterized by his usual candour, because throughout the papers which express the views formally taken by the Governments and

throughout the arguments it has always been said there must be a *bona fide* trial upon the charge on which the man was delivered up, that being the test of the *bona fides* of the requisition, because if he were not tried at all for the offence for which he was asked to be surrendered it would be strong evidence that there was an indirect purpose in asking for the surrender on particular grounds. Therefore a *bona fide* trial for that particular offense will always be regarded on our side as involved naturally in the demand for extradition. I will now follow my noble and learned friend in his arguments. I confess it was with some surprise I heard him endeavour to lay the foundation for everything which was to follow, not in the terms of the treaty between the two Powers, but in some vague notion of some *a priori* comity leading to the obligation of extradition independent of the treaty, importing silent clauses and expressions of jurists, on which he laid much stress. These arguments did not seem to be good enough to be worth producing in the correspondence laid on the table, and the able despatch in which the arguments of Her Majesty's Government are summed up, so far from parading the opinions of jurists and text-writers, disputes the propriety of introducing them. But if the argument developed from those writers has any really legitimate bearing on the question, it is not conceivable that my noble and learned friend or the law advisers of the Crown should not have discovered the passages he has just quoted in time for them to do duty not merely in your lordships' House, but in the important correspondence with the United States Government. My lords, I confess that for my part I have not been persuaded by my noble and learned friend's able speech to accept the views of those writers as in any degree affording a solution of this question. There is no such thing—certainly there never has been such a thing recognized in or by this country—as an *a priori* international obligation to grant extradition to all. That depends with us entirely on treaties. The terms of those treaties must contain in themselves the whole measure of the obligation as between country and country. I am fully aware that even in the United States there are great writers—at least as great as any of those quoted by my noble and learned friend—who maintain that there is a certain *a priori* right to grant extradition. But my noble friend did not refer to them, because he would not find in them anything in support of the view that it is an implied condition of extradition that a man should be tried only for the crime on which he has

been surrendered. The real truth is, all those writers do but generalize from the laws of their own countries or particular treaties of their own or other countries which they collect in their books. That is more especially the case of Faelix with regard to France. Now as to the law of France, my noble and learned friend stated very truly that in 1841 the Minister of Justice laid it down as a rule that a man was not to be tried for any offence but that on which he was given up, and he referred in illustration of this principle to a case which occurred between France and Geneva. But what is the bearing of all that on the question now before us, except that another great and civilized country has taken the same view of it as was taken by the British Parliament in the year 1870? In France extradition depends entirely on the absolute despotic action of the Government. The Executive Government of France in 1841 laid down for its own guidance and the guidance of its executive officers a rule which has been laid down by this country in the Act of 1870. How that bears upon our engagement of 1842 with the United States passes my comprehension. I will not, therefore, detain your lordships on this point. Not only, my lords, does the Executive Government in France possess an absolute power with respect to extradition, but the Cour de Cassation in 1867, at the instance of the then Minister of Justice, decided that the French Courts had nothing to do with the rule laid down in the Circular referred to, and I believe the Minister of Justice in that year did actually cause a man to be tried on an offence other than that on which he had been surrendered. I ought to apologize to your lordships for having detained you so long on the subject of the law and practice of France, because the question is not as to the law and practice of France, but as to the treaty between this country and the United States. My noble and learned friend said he did not know of any authority who expressed views different from those entertained by Her Majesty's Government. My lords, we have a writer of very great learning who has collected a body of international law with perhaps more fulness than most others—a writer, I believe, to whom foreign jurists look with considerable respect—I mean Sir Robert Phillimore. I don't think my noble and learned friend would find it laid down in Sir Robert Phillimore's book as a principle of international law, with respect to extradition, that a man should not be tried for any offence but that on which he has been surrendered, though I believe he would find it to be a recognized principle of

international usage that an extradited person should not be tried for a political offence. Now I come to what governs the whole matter, namely, the Treaty of 1842. My noble and learned friend asked, if a man could be tried for any other offence than that on which he had been surrendered, why certain crimes were specified in the treaty, and a provision laid down that there should be *prima facie* evidence according to British law that he was guilty of one of them. My noble and learned friend noticed that that list of offences did not include embezzlement, manslaughter, rape, and abduction, and he challenged us to say why there should be that selection. He said it was not a sufficient reason to say that this was done to provide against arbitrary arrests, and then he went on to state his own view. Well, the specification of offences is made because it is not consistent with the principle of extradition that a person should be given up except for a crime which has a common character in both countries. For that reason the practice has been to specify offences as to which the jurisprudence of both countries agree, and as to the meaning of which, therefore, there should be no ambiguity. It is perfectly true that the specification of offences does not go as far as it might do, but it goes as far as, in the treaty between the two parties, it is thought necessary or convenient to go in the direction of ascertaining what are the offences which have a common designation and a common meaning under the laws of both countries. Then why does the English law require *prima facie* evidence in the first instance as to the guilt of the man in respect to the crime for which his surrender is asked? Plainly because the crime is specified—because the same principles in both countries apply to it, though each country may have its own particular method of dealing with it. The provision as to *prima facie* evidence cannot mean that British law is to govern for any other purpose than for determining the sufficiency of the case for giving up the man to American justice. When he gets to America he must, of course, be tried, not by British, but by American law, and if found guilty must undergo the punishment which American law provides. The sole purpose of applying the test of British law in this country is that before we give the man up we should have *prima facie* evidence that he is guilty of one of the crimes specified in the Treaty of Extradition. We give him up, then, because we have confidence in the justice of the country which claims him, and if the conditions on which we give him up are fulfilled I

am utterly at a loss to understand why he should not afterwards be tried for any offence whatever—other than political—for which American law can try him. (Cheers.) Let us look at the abstract principle from the common sense point of view, and it is very material to do so when the question is whether we are to interpolate what my noble and learned friend calls a silent clause, if the treaty does not express it. Of course if the *a priori* reason were so plain, so manifest, that no two sensible persons could differ about it, then I could understand the argument as to the interpolating of a silent clause. But that is not the case. I hope your lordships now present heard the speech made by the Chief Justice of the Court of Common Pleas when this question was last before the House. Putting political offences aside, he appeared to me to show, in the most convincing manner, how contrary to the spirit of international justice it would be to fetter the demands of that justice by requiring that a man should be tried only for the precise offence for which he was given up. If you really place confidence in the justice of the country with which you make the treaty, what possible interest can the country which delivers a man up have in sheltering him from trial and punishment for any crime that he has committed? Have you any engagement with him to shelter him in that way? Certainly not. Your only engagement is that which you have with the country with which you have made the treaty. Are you to assume that he will be fairly tried for the crime for which you have surrendered him, but that he will not be fairly tried for any other? Surely not. The mode of examining, the mode of trial, the law of evidence, and the consequences of the crime may differ entirely in the two countries, but he is sent to be tried according to the law of the country to which he is given up, not according to ours. But it is said that if he is acquitted the inference then is that if the facts which come out in evidence had been brought before the magistrate of the country which surrenders him he would not have been surrendered, and the country to which he is sent would avail themselves of their own wrong if they tried him for another offense. That, however, is an argument which puts aside the substance in dealing with the form of the matter. Take the case of murder and manslaughter. Murder is the greater, manslaughter the less offence. I rather think that by our present law, even if the indictment brought against a man is for murder alone, he may be found guilty of manslaughter upon the very same evidence, because the latter offence

is less than the former, and the jury may take a merciful view of the facts. Can it be said that this country has an interest in protecting a man who has been delivered up for murder from being convicted for manslaughter, when under a more merciful view of the evidence adduced to convict him of murder the offence is reduced to the lower crime? Surely if the man is handed over by us on sufficient grounds, we have no interest in fettering the action of justice. Take the case of extradition crimes only. Supposing a man is accused in America of all the seven offences mentioned in the treaty, would you actually impose on the United States the burden of sending over to England all the voluminous proofs of the various offences of which it might be necessary to accuse him? And all this not because it is supposed that they have some sinister end in view, or a desire to do that particular man a wrong, but because you say we have a right to his not being convicted of any offence other than that as to which we have seen the evidence. If the case of political offenders were put out of sight, surely it would be conducive to the interests and the objects sought by all extradition treaties that where sufficient evidence is produced to justify the surrender of a criminal, he should be tried in the country to which he goes upon any criminal charge that might be brought against him. That view is, I hold, not so manifestly wrong or unreasonable that you should impose a silent obligation which is not expressed in this particular treaty. The treaty is as far as anything in the world can be from implying any such thing. It says that the two countries agree that on mutual requisitions made by them or their Ministers they will respectively deliver up to justice all persons who, being charged with any one of these offences committed in the jurisdiction of the other, shall seek an asylum in the territories of the other. The noble lord the Foreign Secretary held that the person surrendered was only lent to the foreign Government for the purposes of that surrender, to be tried for a particular offence. The persons who negotiated the Treaty of 1842 and the Minister who introduced the Act of 1843 were utterly ignorant of that theory. Nay, more, a contrary theory was distinctly expressed and recognized, and the only question that was then seriously discussed was the bearing of the treaty on the subject of slavery. With your lordships' permission, I will trouble you with a few extracts from the debates in the House of Commons when the Act of 1843 was under discussion. Referring to the case of a slave who had come within our jurisdiction, Mr. Vernon Smith said:—

"Supposing he was really guilty of some crime, was he, when taken back, to be treated as a slave or a freeman? The conditions of trial were very different, and so were the punishments of slaves and freemen. In the case likewise of a slave committed by a magistrate unjustly (and he supposed magistrates in the colonies were not wiser than anywhere else), and afterwards acquitted, what became of him? All the vindictive feelings of the owner might be exasperated against him on account of his flight, and he might be inclined to wreak his vengeance upon him when thus restored to his possession."

Was that met by the Attorney-General of that day by the argument that the man only went back to the United States to be tried for the particular crime for which he had been given up, and that if he was acquitted there was an implied obligation that there should be an opportunity for his returning to our jurisdiction? Sir F. Pollock, the Attorney-General, then answered:—

"We had nothing whatever to do with the circumstance of the person delivered up being a slave or a freeman. We should deliver him up as a criminal. All that we insist upon is that before any man shall be delivered up to the Americans he shall be charged with one of the crimes mentioned in the treaty. If that were done we did not care whether the man had been a slave or not. The magistrates would have to deal with a man charged with having committed an offence in a foreign State, and his status in that State had nothing to do with the case. That was a point to be settled on the man's return to America."

Lord Macaulay was not satisfied with this answer. He thought this made matters worse, and he would rather give up the Bill, and he asked,—

"Suppose the man was acquitted in America, what was to be done with him then? Was he to remain a slave in the hands of a master incensed by the attempt to run away? Would the slave's life in such a case be safe, even after his acquittal?"

The late Lord Derby, then Lord Stanley, replied to that thus:—

"No doubt it was possible that persons, whether guilty or not, if sent back to a country where slavery prevailed, might be returned to a state of slavery."

That was the language of the Lord Stanley of that day, and there was no man in this country who was more op-

posed to slavery, or who would have been more ready to take steps to rescue a man from slavery than he was. I have referred to these passages to show that the idea that a man could only be tried for the offence for which he was surrendered under the Treaty of Extradition was not then entertained by the British Government. The noble and learned lord on the woolsack has said that the Act of 1843 contained words to the effect that a man should be surrendered for the purpose of being tried for the crime of which he was accused, and I admit that that is the language of the Act. But the noble and learned lord goes on to say that a man cannot be tried in one country under a warrant directed to another country, and that trust funds cannot be invested in one security when it is directed that they shall be invested in another. I maintain that those cases have no application whatever to the present question. It is true that a man cannot be tried in one country under a warrant directed to another country, but that does not prohibit a second warrant directed to the first country from being issued, and it is not because trust funds are directed to be invested in a particular class of security that a subsequent order may not be made directing them to be invested in other securities. There is, therefore, no analogy at all between those cases and the point now at issue. What have such cases to do with the power of a country to whose justice a man has been surrendered to try him for any offence he may have committed according to their own law? I therefore demur entirely to the proposition that because an English Act of Parliament and an American Act of Congress state that a man is to be delivered up to be tried for a particular offence, that therefore he cannot be tried for any other. To show that in trying him for any other offence a breach of faith under the terms of the Treaty would be committed, we must do something more than put forward the words contained in the English Act of Parliament. In my opinion, we ought to treat with some respect the construction which has been put upon the Treaty by the American Courts of Justice. The words to which the noble and learned lord refers have been the subject of judicial interpretation in the American Courts, as appears from the papers, and those Courts, having before them the terms of the British and American Acts, of the Treaty, and of the Warrants, have held that the language used in them does not bear the construction the noble and learned lord seeks to put upon it, and their decision had been confirmed by the Canadian Courts. But the matter does not stand there, because if these words

have the force and the importance which the noble and learned lord attributes to them, how is it that they were omitted in the Treaty with Denmark in 1856? The next step brings us to a matter to which the noble and learned lord made no reference whatever, but the importance of which was pointed out by the noble earl near me. I refer to the terms of the Convention made with France in 1853. Those terms showed that there was no objection whatever on the part of the British Government to a man being tried for any extradition crime other than that for which he had been surrendered, notwithstanding he had been tried and acquitted of the offence for which he had been delivered up. The words of the 7th section of the Convention are:—

"No accused person to be proceeded against or punished on account of any political offence committed prior to his being surrendered, nor for any offence not described in the present Convention, which he may have committed previously to being surrendered.

On which Mr. Clarke observes:—

"It will be observed that under this Convention a person who had been surrendered could have been tried for other offences than that for which his rendition has been granted, provided that such offences were not political and were within the list of crimes contained in the Convention.

It must be remembered that at that period Parliament was very jealous of any concession on such a subject as this being made to France, a circumstance that made it at all events very difficult to arrive at any agreement on the question of extradition. The Convention failed, but on other grounds than the terms of the section which I have just read to your lordships, and I merely refer to them to show what was the understanding of the British Government on the point at that time. But I now come to the case of Burley, in which the British Government had every possible motive for raising in favour of the prisoner the point now taken by the noble and learned lord. At this distance of time I am not committing any indiscretion in laying before your lordships the views which were then held by the British Government in reference to that case. Burley was charged in Canada under the Extradition Treaty with robbery and with assault with intent to commit murder. The Canadian Judges held that they were bound to surrender him on the charge of robbery, which had been committed at Johnston's Island, a portion of the United States, to which the war had not up to that time penetrated. The

Home Government, however, did not approve the decision of the Canadian Judges and thought that the man ought not to have been surrendered, and, moreover, they were afraid that the man would be treated as a political offender. They, therefore, would have been most anxious to raise the point that the man could only be tried for the offence for which he had been surrendered and they felt that the terms of the Treaty would have enabled them to do so. It was my duty as one of the Law Officers of the Crown to advise the Government on the matter, but I and my colleagues were satisfied that the Treaty, would not bear the interpretation the noble and learned lord now desires to put upon it, and we were unable to interfere in the matter. That case, therefore was beyond all doubt an instance where the British Government expressly placed an interpretation upon the Treaty directly the contrary to that of the noble and learned lord. My noble friend says that in 1866 his opinion had been stated in Parliament. True; but in 1868, before the Committee of the House of Commons, evidence was given as to the view upon which the Foreign Office had then acted, and this evidence was laid before Parliament and published to the world. The result of the Committee's deliberation was strongly against the view now taken by Her Majesty's Government. The Committee did not say, "We find the existing Treaty, in accordance with the view of all civilized nations, had a tacit clause which provides that a man when surrendered shall only be tried for the offence on which he has been surrendered," but they proposed that in future Treaties there should be an express agreement to this effect. This is strong evidence that the Committee did not think it was already provided for in all the Treaties. It is clear, too, that this was not then the understanding of the Foreign Office, and Mr. Mullens, to whom Sir Thomas Henry referred as the solicitor who knew most upon this subject, said the existing understanding was quite the other way. Mr. Stuart Mill asked this question:—"As I understand it, the Treaty with America will not prevent a man from being tried for another offence?" And the answer of Mr. Mullens was, "It will not. There is no stipulation that he shall not be tried for any other offence." It is clear that, according to the whole evidence, no such obligation was understood to exist, as it was not expressed, and accordingly the Committee recommended that it should be expressed in all future engagements. The third clause of the Treaty of 1870, therefore, provides—and I will read the words, to which sufficient attention has hardly been given:—

"Unless provision is made by the law of that State or by arrangement that the fugitive criminal shall not, until he has been restored or had an opportunity of returning to Her Majesty's dominions, be detained or tried in that foreign State for any offence committed prior to his surrender other than the extradition crime proved by the facts on which the surrender is grounded."

And the corresponding clause 19, expressing the obligation which we take upon ourselves, is in these words:—

"Where, in pursuance of any arrangement with a foreign State, any person accused or convicted of any crime which, if committed in England, would be one of the crimes described in the first schedule to this Act, is surrendered by that foreign State, such person shall not, until he has been restored or had an opportunity of returning to such foreign State, be triable or tried for any offence committed prior to the surrender in any part of Her Majesty's dominions, other than such of the said crimes as may be proved by the facts on which the surrender is grounded."

It appears highly probable, therefore, that in this country a man might be tried under the Extradition Treaty for a different crime from that upon which he had been given up, provided it was one of the enumerated crimes on the Act of 1870, and provided it was proved by the facts in which the surrender was grounded. I confess also that I think those who prepared these two clauses had a little more reason than is contained in the argument we have heard on this occasion. A further and material part of the case is contained in the last section of the Act of 1870, which provides that "this Act, with the exception of anything contained in it which is inconsistent with the Treaties referred to in the repealed Acts"—that is, the American, the French, and the Danish Treaties—"shall apply for the purpose of the execution of these Treaties." Now, the Legislature must have meant something by this clause. "Inconsistent with the existing Treaties?" But, according to the argument of my noble and learned friend, there was nothing in the Act inconsistent with the existing Treaties. Why, then, was this clause inserted? According to our view, they were new conditions, and if these conditions were really in the existing Treaties, then the exception introduced into the Act was perfectly idle and useless. There appears to be strong evidence that Parliament knew it was laying down a new law and was imposing new conditions for the future. It knew that these con-

ditions could not be imported into existing Treaties; it did not wish that these Treaties should be put an end to; it provided new machinery for the purpose of these Treaties; and, in point of fact, there has not been the smallest difficulty in applying, for the purpose of the surrender of criminals under the Treaty of 1843, the judicial machinery of the Act of 1870. It is rather singular that my noble and learned friend should have taken no notice of the Note in Mr. E. Clark's book on Bouvier's case. Mr. Clark is a lawyer of considerable experience, who has been engaged in several of these extradition cases, and in his book is collected the whole history of extradition. His Note is as follows:—

"It is curious that this point has not yet been in any case under the American Treaty. It is quite clear that neither that Treaty nor the law of the United States contains the provision required by the Extradition Act, 1870. The question is a very important one, and deserves to be fully argued." Nor can the case of Bouvier be accepted as conclusive, even with regard to France. The point may be raised again upon more satisfactory affidavits as to the law of France than were before the Court in that case."

To Mr. Clark, therefore, it seemed clear that this was a new rule in the Act of 1870, operative as to future Treaties, but expressly excepted as to existing Treaties. Those who advised the Government in a different sense from that of the argument of my noble and learned friend are certainly justified, in my opinion, upon every principle applicable to the construction of written instruments; and but for the political argument as to political offenders, I should say with confidence that the common-sense of the matter is entirely against the view of the Government. But I admit there is a good deal to be said in favour of the argument as to policy in the case of political offenders. This may or may not be a sufficient reason for adhering to the policy of the Act of 1870. It may or may not be a sufficient reason for doing that which the Legislature were not prepared to urge upon the Government in 1870—namely, put an end to the American, French, and Danish Treaties. But it cannot have the effect of interpolating into these Treaties, by reason of that ulterior consequence, conditions which are not there. Nor, indeed, as far as the understanding of the two countries is concerned, was it necessary to do so, because the United States admit as fully as we do, not that there is in the words of the Treaty an implied exception as regards political offenders, but that by the under-

standing of most civilized nations, such offenders cannot be put upon their trial after extradition for another offence. I must say, however, that if ever there was a nation which was entitled to confidence in this respect, it is the United States. (Hear.) I do not know of anything much nobler than the conduct of the United States after the suppression of the Civil War. Men who in their disputes with us they branded over and over again as pirates and everything else that was bad, were, on coming into their own power, recognized as political offenders, who had simply tried to alter the constitution of their country. There never was an instance of equal leniency under such circumstances. Moreover, this leniency does not stand alone. The facts relating to the case of Burley strongly tend to justify confidence in the United States on that subject. He was put upon his trial for robbery, and certain facts on which he had been surrendered, being proved, the Judge in the United States pointed out that the complexion of the case was political, and he summed up decidedly for an acquittal. It is true the jury differed, but the man had the benefit of the doubt and was not convicted. I think he was put on his trial a second time, but the result was the same. It was impossible to eliminate the political element from the case, and consequently he was not convicted. This is a very good reason for placing confidence in the United States on that subject. I would here remind your lordships of the remark which Lord Aberdeen made in 1843. He said:—

"The great security was the provision that this part of the treaty should continue in force only till one or other of the two Governments signified its intention to terminate it, so that, whenever inconveniences arose, either Government was at liberty to put an end to that part of the treaty without being under the necessity of giving any notice beforehand."

It is plain that Lord Aberdeen would have followed the course which the noble earl opposite was first disposed to take until another view, which he at last accepted, was pressed upon him by another Department of the Government. I very much agree with a passage which I find in a letter from Mr. Fish, under date the 22d of May, 1876, in these papers. Mr. Fish says:—

"The rights of society and the duties of the State in the punishment of criminals should not be narrowed and unduly restricted, upon the vague suggestions or fear that, at some time, some political criminal may be placed in jeopardy. The duty of Government to protect its own citi-

zens and punish crime is equally a duty with that of affording hospitality and shelter to political offenders from abroad. The Government of the United States sees no reason why either should be sacrificed to the other, any more than why all criminals should escape, for fear some political offender may suffer."

Again, I find in a letter written by the late Sir Thomas Henry on the 4th of January last the following passage, which appears to me to have an important practical bearing on this point:—

"After an experience of upwards of 30 years, I can say that I have never known a single instance in which there was any occasion to consider whether there was anything of a political character in the offence charged; and I therefore think there is no cause for the least alarm upon that ground. Extradition treaties are in the nature of mercantile treaties, and are intended to afford protection chiefly against dishonest clerks and fraudulent bankrupts."

The present question has reference to no other nations which have Extradition Treaties with us, but only to the United States. They are perfectly willing to enter into the strictest engagements to try no man for a political offence who is surrendered under the treaty, and I think it would be greatly to be deplored if negotiations which had so nearly reached a practical end before this unfortunate difference between the two countries arose should now be made more difficult in their further progress. I should, indeed, feel deep regret if that unfortunate difference were to lead to anything like a permanent cessation of a treaty so important to both countries and to the administration of justice. (Hear, hear.)

The motion was then withdrawn.

Their lordships adjourned at 9 o'clock.

THE TIMES, FRIDAY, AUGUST 4, 1876.

The argument on the construction of our obligations to the United States under the Treaty of 1842 ought by this time to be ripe for settlement. The Lord Chancellor delivered last night the speech he began and was unable to go on with last week, and Lord Selborne followed with an elaborate reply to it. The discussions in the House of Lords and the Correspondence between the two Governments evidently furnish ample materials for judgment upon the Treaty of 1842, and we ought to have little difficulty in deducing from them the proper form to be assumed by that

new Treaty which should be soon completed in the interest of both countries. It is, however, necessary to keep the two questions distinct from one another. What was agreed upon in 1842 is properly a legal question; what should be agreed upon now is a question of policy; and it may well happen that the obligations we accepted in 1842 are larger than those we should be willing to enter upon in 1876. It is because we believe them to be larger that we are satisfied to note the abrogation of the late Treaty and to await the negotiation of a substitute.

Under the Treaty of 1842 we bound ourselves to surrender to the United States fugitives against whom a *prima facie* case could be established of criminality in respect of one or more of the crimes mentioned in the Treaty, and an Act was passed in the following year giving the necessary sanction to the obligations of the Treaty. The Treaty and the Act say that the criminal surrendered is surrendered to be tried for the crime in respect of which he is surrendered; both are silent as to what may or must be done with him after he had been tried and acquitted, or, after having been tried and convicted, he has served out the term of his punishment. The contention of Lord DERBY, which was fully sustained by the LORD CHANCELLOR yesterday, was that a man surrendered in respect of one crime cannot be tried for any other committed before his surrender; and if the first trial breaks down, he must be allowed an opportunity of returning to the country whence he has been surrendered, and must then be made the subject of a fresh demand. The same reasoning would apparently apply if the man had been convicted and undergone punishment for the first offense. The United States Government, on the other hand, contend that when a man has been fairly claimed and fairly tried he may be put on his trial for any other offence against the laws of the United States, his surrender having been obtained honestly and for sufficient cause. It must be admitted that there is no express provision in the Treaty of 1842 negativing this claim of the United States, and the LORD CHANCELLOR was reduced to arguing against it yesterday on the ground that the statement that a man was to be tried for the offence for which he was claimed implied that he could not be tried for any other. The presumption thus raised is not very strong, and appears to be rebutted by the discovery that in subsequent Treaties the proviso which Lord CAIRNS regards as a necessary implication has been expressly inserted as something that would not be deduced from the Treaty if it was not stated. Next the LORD CHANCELLOR

dwelt upon the opinions of international jurists that an extradited criminal should be tried only for the crime for which he is given up; but the LORD CHANCELLOR knows that these opinions have not been universally held, and they cannot govern the construction of the Treaty of 1842, unless they were laid down with universal authority antecedently to it. Then Lord CAIRNS appeals to the language of the negotiators of the Treaty, to the Message of President TYLER to the Congress, and to the debates in Parliament in reference to it. We might insist upon the rule that the language of a Statute cannot be construed by the help of debates upon it, but Lord SELBORNE showed that the debates in this case told against the LORD CHANCELLOR, and it is undeniable that in two or three cases, whether by negligence or otherwise, the construction Lord CAIRNS would put on the Treaty has been negatived in practice, and that it was twice deliberately repudiated by our own Law Officers. We are glad to find that the LORD CHANCELLOR does not adduce the Statute of 1870 to explain the Treaty of 1842, though he insists that the Government might appeal to the Statute as preventing them from fulfilling the obligations of the Treaty, and if he did not refer to it for this purpose it was because he found its most critical clause "absolutely and utterly unintelligible." On the whole, the LORD CHANCELLOR fails to prove that the construction of the Treaty insisted upon by the United States Government is not its proper construction. It is, at least, a construction that may be fairly held, though it must be added that even if it is the right and proper construction, it does not follow that we are bound to go on in submission to it. The Treaty of 1842 could be put an end to at any time by either party to it, and, if its right construction is inconsistent with the principles of Extradition Parliament deliberately approved in 1870, a proper case is presented for revising it in connexion with the Statute.

The Treaty of 1842 is practically at an end; but it is imperative that a new Treaty should be negotiated to take its place, and the important question to be discussed is what is the form of agreement for the Extradition of criminals to which the United States and the United Kingdom can be brought to consent. If Lord GREY was rightly understood last week, he would allow refugees to be given up for all offences, political or otherwise; but Parliament would never agree to a proposal which public opinion would emphatically repudiate. It may be argued with more plausibility that, if a man can be claimed for a civil crime, we are not required to protect nor justified in protecting

him because he may be also amenable to political prosecution. If a man happens to be a forger as well as a political refugee, can his virtue as a refugee so efface his crime as a forger that he should not be given up at all; and, if we do give him up to be tried as a forger, has he not so far lost all claim to our sympathy that we may abandon him to any further prosecution? It is probable that, on a cool examination of the reasons which ought to govern our determination of this point, we should come to the conclusion that where a *prima facie* case of vulgar crime is proved against a man, he should be handed over to the pursuing Government without any more questions being asked or answered; but it would be useless and worse than useless to enter upon agreements which would be broken under stress of popular pressure, and, if we gave up a criminal who was also a political refugee, it must be under an agreement that he should be tried for the ordinary crime proved against him, and no other. This involves the necessity of requiring in all cases of Extradition that the surrendered person shall be tried for civil crimes only, and that we shall be satisfied that the charges against him satisfy this condition. It does not, however, follow that a man claimed and surrendered in respect of a particular crime must be allowed an opportunity of returning to the country from which he was drawn before he is put on his trial for a second crime. He might be tried for any other crime which could be the ground of an Extradition claim, subject to the proviso that we had some guarantee that the offences thus made the ground of subsequent trials were such as we should recognize as justifying an original demand. There is no doubt a difficulty in suggesting the form this guarantee should take. The first demand for Extradition is substantiated by evidence of criminality laid before a magistrate, but this process could not be applicable to subsequent charges, unless we resort to that troublesome process we desire to avoid of bringing over the criminal again with all the witnesses against him. As our sole object is to prevent a political offence from being disguised as a vulgar crime, it would seem to be sufficient if the Foreign Office were made the judge of the *bona fide* character of prosecutions which were about to be commenced against an extradited criminal by way of supplement to the case established against him when his Extradition was first claimed. It might thus be provided that a man surrendered to be tried in respect of a particular crime *prima facie* proved against him might be tried for any other crime enumerated in the schedule of the Extradition Treaty, provided always

that in the case of his being thus tried upon a supplementary charge minutes of the evidence brought against him should be furnished to the Government which gave him up, and he should be subject to no other punishment than that of detention until the surrendering Government had an opportunity of examining the case and of claiming his liberation, if there should appear to have been an abuse of the Extradition. It may be said that difficulties of an awkward and even exciting kind might arise if such claims could be made, but we believe that in practice they would never be experienced. Unless there was *mala fides*, they could not arise; and when there is *mala fides*, there will always be difficulties, whatever the form of the Extradition Treaty. Even if we went the length of saying that when a man is once given up on a criminal charge we should care no more about him, we might find ourselves tricked in surrendering a man for what appeared to be a vulgar crime and turned out to be a political offence. We need scarcely refer to the evidence of the late Sir THOMAS HENRY, quoted by Lord SELBORNE last night, to prove that these are idle fears, and we believe, if a Convention were drawn up upon the principles we have indicated, it would be found to work easily and well for the international repression of crime, without exposing the safeguards of political refugees to danger.

Dispatch, No. 15, Fish to Pierrepont, dated August 5, 1876

A. B. No. 15.

Department of State,
Washington, August 5, 1876.

Edwards Pierrepont, Esquire
&c. &c. &c.

Sir:

Mr. Hoffmann's despatch of the 3d of July, forwarded to the Department a copy of Lord Derby's note to him, dated the 30th of June in which he did me the honor to take into consideration, and to offer a reply to mine to Mr. Hoffman, under date of the 22d of May, in regard to the Extradition question.

Subsequent to the date of this instruction to Mr. Hoffman of the 22d May, and prior to the date of his Lordship's reply, Her Majesty's Government had discharged from custody the fugitives whose surrender had been demanded of Great Britain by the United States, with all the requirements of the treaty between the two Governments providing for the extradition of fugitive criminals. This act

of Her Majesty's Government called for the decision of the President of the United States, which was announced in his message to Congress of the 20th of June last, of which you have been given a copy, wherein he stated that the position thus taken by the British Government, if adhered to, cannot but be regarded as the abrogation and annulment of the Article of the Treaty on Extradition—that under the circumstances it would not, in his judgment, comport with the dignity or self respect of this Government to make demands upon that Government for the surrender of fugitive criminals, nor to entertain any requisition of that character from that Government under the treaty. The general question has therefore, for the present at least, and while the British Government adheres to the position it has taken become an abstract one, and this Government has no desire, under such circumstances, to prolong a discussion which does not promise to lead to any good result.

I deem it proper, however, to correct an error of fact into which his Lordship appears to have fallen.

In my instruction of the 24th of May, alluding to a statement of the Home Secretary that no question had been raised by him, until he was satisfied that Lawrence had been indicted, though not arraigned for smuggling, I stated that the indictment against Lawrence for smuggling was found some time before any proceedings were taken for his extradition. In reply thereto, Lord Derby now states, "this may be so, but Lawrence was arrested and held to bail on this indictment for smuggling, after his extradition."

After a careful examination of the question, and upon the authority of a report from the officer particularly charged with the prosecution of Lawrence, which entirely agrees with the information in the possession of the Department of State, it may be stated that since Lawrence arrived in the United States, in custody upon the proceedings taken in London for his extradition, he has not been arrested, has not given bail and has not been arraigned or called upon to plead to the charge of smuggling—nor has he been arrested, arraigned or called upon to plead to any indictment, or to any charge whatever, not based upon the particular charge of forgery upon which he was surrendered.

Bail was fixed by the Court upon a single indictment based on the forgery on which he was extradited, which was never offered, and to this indictment based on this forgery Lawrence plead guilty on the 25th of May.

This plea being entered he was admitted to bail, and has since been at large pending sentence.

Some error has also arisen in reference to the statement that I informed Sir Edward Thornton, that although Lawrence had not been arraigned for any crime other than that for which he was given up, he had given bail to appear for other crimes.

The accomplished Minister of Great Britain must have misunderstood what was said on this point, as Lawrence prior to his plea of guilty on the charge for which he was surrendered, and at the date of the alleged conversation had never given bail upon any charge whatever.

Believing it important that no mistake of fact should exist as to these proceedings, you will with Lord Derby's permission leave with him a copy of this instruction.

I am, Sir, Your obedient servant,

HAMILTON FISH.

Letter, Fish to Pierrepont, dated August 7, 1876

N. No. 16. Department of State,
Washington, 7 August, 1876.

Edwards Pierrepont, Esquire
&c &c &c

Sir:

I have to acknowledge the receipt of your No. 11 in reply to the cable despatch addressed to you July 20.

You will remember that inquiry was made in that telegram what the communication was which Lord Derby referred to as having been lately received by him from the Government of the United States, and on account of which he desired a postponement of the discussion of the Extradition question which was about to take place in the House of Lords.

It does not yet appear what this communication was. In case you have knowledge thereof, I desire to ascertain what it was, and if it was a communication from the Legation in London, you have neglected to forward a copy to the Department which omission you will please supply.

You give in this despatch your reasons for the opinion that Her Majesty's Government would like to reestablish proceedings for extradition under the treaty of 1842 and that Lord Derby, in case an excuse could be found, would be ready to change the ground which has heretofore been

assumed, and that no further excuse would be needed, should it be found that he had been mistaken as to the facts in Lawrence's case.

In an instruction to you of the 5th instant, in reply to Lord Derby's note to Mr. Hoffman, dated June 30, I called attention to the further error into which Her Majesty's Government had fallen as to the proceedings which have been taken in the United States against Lawrence since his extradition, and explained in connection with former statements that Lawrence had not been arrested, had not given bail and was not now under arrest or held on the charge of smuggling.

As you were instructed to furnish Lord Derby with a copy of this despatch, he will thereby be placed in possession of the facts upon that point.

I note your expression of opinion as to the desire of the British Government to restore the operation of the treaty of 1842. Should any intimation or proposal be conveyed to you on this head, you will promptly advise the Department, by telegraph, and any such proposal should emanate entirely from Her Majesty's Government.

The difficulties in the way of a new treaty at the present time, under the Act of 1870, are quite well known, and it is a cause of regret that no means now exist to protect either country from becoming a place of refuge for criminals from the other, or to enable either Government to mete out punishment to those criminals who having fled from justice in the one have taken refuge in the other.

I am, Sir, Your obedient servant,

HAMILTON FISH.

Dispatch No. 23, Pierrepont to Fish, dated August 22, 1876

No. 23 Legation of the United States
London August 22 1876

Hon Hamilton Fish
Secretary of State
Washington D. C.

Sir.

Referring to your Despatch No. 13 dated August 2d 1876 in which you say:

"If your note was calculated to give rise to any expectation that authority might thereafter be given to you

to enter upon the negotiation in London, it is desirable that such expectation be removed."

I have the honor to enclose a copy of my note which I do not think calculated to convey such idea and the possibility of any such idea being conveyed must have been removed in the way indicated in my Despatch No. 11 of July 21, in which I say:

"I have since told Lord Derby that unless I had new instructions I could not enter upon any negotiations touching the Extradition question and that such negotiations must be carried on in Washington."

And in my Despatch No. 14 of July 25th I state that in conversation with Lord Derby on the day before,

"I replied, that as everything about the Treaty must be negotiated at Washington, after having verbally said this before, I wrote your Lordship a note the other day to the same effect to avoid any possible misunderstanding. He said, 'Yes, I received it.'"

I herewith enclose a copy of my formal note to Lord Derby of July 21 and his formal reply to the same of July 24th.

As these Despatches were not received at Washington until after your Despatch No. 13 of August 2d was forwarded to me, of course, you did not at that date know the exact state of the case in London.

I have the honor to be with great respect your obt servt.

EDWARDS PIERREPONT.

Hon Hamilton Fish
Secretary of State
Washington D. C.

List of Enclosures.

1. Mr. Pierrepont to Lord Derby July 16, 1876.
2. Mr. Pierrepont to Lord Derby July 21, 1876.
3. Lord Derby to Mr. Pierrepont July 24, 1876.

Dispatch No. 25, Pierrepont to Fish, dated August 23, 1876

No. 25 Legation of the United States
London August 23d 1876

Hon Hamilton Fish
Secretary of State
Washington D. C.

Sir.

Referring to your despatch No. 16 dated August 7th 1876 I have the honor to state that I did not send any communication to Lord Derby and of course, could not forward any copy to Washington. I spoke to him about the report and he replied that he had not stated that he had received any communication from the Government of the United States, and I will add that he was not so reported in "The Times."

I beg also to remind you that in my cable of the 22d of July, I stated:

"Not accurate about Derby" meaning to reply to your cable of July 21st in which you state:

"Journals report Derby as stating receipt of a communication from this government in re Extradition."

I have had no opportunity to meet Lord Derby since I left with him a copy of your instruction No. 15 nor have I received any note from him on the subject. So soon as I do receive any intimation or proposal I shall communicate it by telegraph as you direct.

There is likely to be delay in this matter, as the summer has been very hot and the officers of the Government are weary and Lord Derby with others is about to seek rest in the country.

I have the honor to be with great respect your obt. servt.

EDWARDS PIERREPONT

Dispatch No. 34, Fish to Pierrepont, dated September 18, 1876

A. No. 34. Department of State,
Washington, 18 September, 1876.

Edwards Pierrepont, Esquire
&c &c &c

Sir:

On the 30th of last month, being in New York, on some private business, and as the time approached for my return

to my country residence, Sir Edward Thornton called upon me saying that he was instructed to propose the negotiating of a new Extradition Treaty, and as a temporary measure to resume surrenders under the Treaty of 1842 without asking any stipulation &c. but that his Government will, in making the proposition, say that if a surrendered criminal be tried for other than the crime on which the surrender is made, it will terminate the Treaty. I asked whether he wished to converse formally or informally on the subject, or whether he proposed to address me a note, he replied that his instructions were quite precise, and that in view of what had occurred in connection with this subject, he thought the better course would be for him to address me a note which he will do as nearly as possible in the language of his instructions.

I asked whether in connection with the temporary arrangement suggested, his Government proposed to surrender Winslow? he said that on that point his instructions say nothing. I told him that I thought that would be a necessary condition to the putting again into operation the provisions of the Article in the Treaty of 1842.

Our interview was short, owing to my being under the necessity of returning to the country, and having an appointment with a gentleman who called while I was conversing with Sir Edward.

On Saturday, September 2d, he was on a visit at Glenclyffe, having telegraphed to me his intention, and after breakfast, requested an opportunity to lay his business before me.

He began by repeating in general terms what he had said in New York, namely that he was instructed to propose negotiating a new treaty, and that in the mean time as a temporary measure, to put again in operation the Xth Article of the Treaty of 1842.

In reply I expressed my appreciation of the importance of an Extradition arrangement between the two countries, and asked if he thought the two points of difference between the Governments could be accommodated.

He replied saying, that he thought there was but one point to which I said decidedly that there were two, namely, the right of trial for other than the offence on which the fugitive was surrendered, and the question of the decision as to the character of the offence, whether or not it be political—he hoped that the latter had been abandoned, and that I had agreed to accept the terms of the German British Treaty—which I denied. He said he thought I had

done so in an interview last May and had telegraphed accordingly.

I corrected him, saying that I had not thus agreed. [In point of fact it would be absurd to think so for no negotiation was then pending, and he left with me a copy of the German Treaty as a matter of information.]

The conversation on this point was continued for some minutes, when he proceeded to say that he had prepared two notes, but wished not to send a note which might be excepted to; and he desired me to read the note he had prepared proposing the temporary arrangement. It limits the arrangement to twelve months, and in terms makes it to extend only so far as the Executive Power of the British Government can act, and then argumentatively refers to the Act of 1870, which has in former correspondence been stated as limiting the Executive power of the Government.

It states that no stipulation will be asked in making surrenders; but that if a surrendered fugitive be tried for other than the crime for which the surrender is granted, the British Government will terminate the Treaty; that the courts, under the act have jurisdiction, and the Government feel bound to state the fact, and that possibly they may refuse to surrender; but the Government thinks they will not.

He asked whether such note would be satisfactory. I replied in the negative—saying that the tone of the note implied a reference to occurrences which cannot be alluded to on their part, without notice on ours, which might be prejudicial to a settlement, that there is something minatory, and suggestive of a want of confidence in the good faith with which this Government would execute the Treaty in the intimation that in a contingency they would terminate the Treaty, that this contingency referred to, was in fact the fundamental difference between the two Governments in their construction of the Treaty of 1842, and that the argument or explanation of the effect of the Act of 1870, in controlling the Executive Power of the Government in its administration of the Treaty, and the reference to the possible decision of the courts, could not fail to call for comment or reply on our part, and that I did not think we were likely to reach an adjustment under such a note—that possibly all which the British Government desire would be attained under the XIth Article of the Treaty of 1842, by which either Government can terminate the Xth Article at pleasure,—that the limitation of time (to twelve months) is unwise—for though it is to

be hoped that a more comprehensive and a permanent treaty might be negotiated within that time, it would leave both countries in their present condition, should such not be the case; that the note should simply propose a renewal of surrenders under the treaty of 1842, and might state that by Article XI of the Treaty, each Government had the right to terminate it at pleasure—that it appeared to me that such statement would cover all, that the British Government desired, without suggesting anything to excite the sensibilities of this Government or to call for reply.

I asked, however, whether they were prepared to surrender Winslow and others—that such act would be necessary to put the Article again into operation; calling attention to the language of the President's message to Congress which had avoided saying that the Treaty was abrogated, but "The position thus taken by the British Government, if adhered to, cannot but be regarded as the abrogation and annulment of the Article of the treaty on extradition."

"Under these circumstances, it will not, in my judgment, comport with the dignity or self respect of this Government to make demands upon that Government for the surrender of fugitive criminals, nor to entertain any requisition of that character from that Government under the treaty"—that the surrender of Winslow would be an essential prerequisite to any further action on the part of the President.

He had no authority for saying that Winslow would be surrendered—he asked if I would mention him by name in my reply?—I said that should he send me the note in such form as we had been discussing, I would reply that the Government of the United States would be willing to act on the old Treaty on the surrender of Winslow and the others whose surrender had been demanded, but who were discharged under the recent rulings.

He then made a pencil memorandum on his proposed note so that it should simply express the appreciation of necessity for a treaty, and propose, as a temporary arrangement, the renewal of surrenders &c., under the treaty of 1842, referring to the provision of the XIth Article, whereby each Government may terminate the Xth Article at pleasure, but without reference to any limitation of time, or of the Executive power of the Government or to the Act of 1870, or of intention to terminate in case a fugitive be tried for other than the offence in which the surrender had been demanded.

He said he would be obliged to telegraph his Government and would await their answer before sending a note.

He then showed me the draft of a note proposing to renew the negotiations suspended in 1874 on the Extradition Treaty.

The note made specific references to the various articles and to the points whereon we had failed to agree, and it promised, on the part of the Government, to apply to Parliament, for a new act to provide that a surrendered fugitive may be tried for other than the one offence on which surrendered, if the consent of the surrendering Government be first obtained on full information given.

I object to this last provision as really useless, as tending to delay, and increase the expense and jeopard the administration of justice—that in our extended country, long intervals might elapse in obtaining and furnishing the required information, and in the mean time the prisoner would be held at expense, and witnesses might disappear &c. &c. &c. Moreover, that the proposed provision tended to no good end, the only object being to guard against political trials, and that they could be guarded against more surely by other means—moreover, that each of the two Governments ought to have some confidence in the good faith of the other.

I said further that, in my judgment, it would be better not to attempt to have any new negotiation based on the former ineffectual efforts, but simply to propose one, and agree to attempt to negotiate a new treaty; that we would, on both sides, naturally start with the knowledge of each others views, as set forth in the former discussion, and would necessarily, without being trammelled by agreements, take the former negotiations as a basis, or starting point, but that on the part of the United States we would prefer not to take up a discussion which had twice proved abortive.

I have postponed sending you an account of this interview, believing from Sir Edward Thornton's earnestness in following me to New York, and thence to Glenclyffe, that he would before this have had some further communication to make. But thus far, I have nothing more, and the matter stands where it was left when he took leave of me at Glenclyffe, a fortnight ago yesterday.

I am, Sir, your obedient servant,

HAMILTON FISH.

Dispatch No. 39, Pierrepont to Fish, dated September 21, 1876

No. 39 Legation of the United States
London September 21, 1876

Private

Hon Hamilton Fish
Secretary of State
&c. &c.
Washington D. C.

Sir:

I have the honor to inform you that Lord Tenterden came up from the Country on Tuesday to remain some three days. Yesterday (Wednesday) I had an informal interview with him a part of which was while taking a lunch. As he had been away I had not met him before since leaving your Instructions No. 15 with Lord Derby. He spoke of the great importance of that despatch, remarking how desirable it was that we should not be mistaken about the facts. He seemed to consider that paper as conclusive as to the action of our Government in the Lawrence case, and as having a most important bearing upon the whole question. He told me that the paper had been referred to the Lord Chancellor for him to consider and advise what course was proper under this aspect of the case. He did not disguise his regret that the matter was in its present condition and repeated what he and Lord Derby had before said, namely, that some arrangement might be made and ought to be made by which extradition could go on under the old Treaty until a new one could be negotiated.

I do not doubt the entire frankness and sincerity of Lord Derby and of Lord Tenterden. I cannot doubt that they think the refusal to deliver Winslow was a mistake caused by a misapprehension of the facts which your instructions have corrected.

Unless the Lord Chancellor, whose speech was much applauded by the Lords, is so committed that he cannot advise freely I shall be disappointed if through Sir Edward Thornton or in some other way you do not receive a proposition before long which will finally result satisfactorily.

The vacation and the "Eastern Question" (at present so absorbing) may delay action upon this business, but I think your explicit statement of the facts which will be received as conclusive, will correct the errors under which the British Government have labored and afford the needed excuse for a reasonable proposition on their part. Lord

Tenterden said he did not wish me to consider this conversation as official but *un*official and informal, that he should tell Lord Derby what he had said to me and that he believed a mode could be devised to carry on Extradition between the two countries pending the negotiation of a new treaty which he thought should be made. He said he was aware that all the negotiations upon this question must be carried on in Washington as I had originally informed him and that he only expressed his * * *

Mr. Berden

No. 40 Legation of the United States
London September 30, 1876

Mr. Edwards Pierrepont
To the Secretary of State.

SUBJECT
The Eastern Question.

SYNOPSIS.

The present state of the "Eastern question." The prospects of a general war as yet not threatening.

Dispatch No. 46, Pierrepont to Fish, dated October 4, 1876

No. 46 Legation of the United States
London October 4th 1876

Hon Hamilton Fish
Secretary of State
&c. &c. &c.
Washington D. C.

Sir.

Yesterday I had a meeting with Lord Derby for the purpose of introducing the subjects mentioned in your instructions Nos. 4 and 5 of June 19th and 21st. Lord Derby desired to defer the matter until a future day, for the purpose, as it seemed to me, of refreshing his recollection.

He then spoke of the agitation in England upon the "Eastern Question"; thought there would be no war and no extra session of Parliament.

He then said: "If your District Attorney had followed your instructions in the Lawrence case there would have been no difficulty about extradition whatever." I replied: "I discovered in a former interview that both you and

Lord Tenterden were in error about the facts in the Lawrence case, and the instructions from Mr. Fish which I had the honor of leaving with you, I trust have set that matter right." He said: "Yes; that despatch changes the aspect considerably; I am communicating with Sir Edward Thornton, and shall further communicate. I think we can get this satisfactorily arranged. I am not speaking officially: I am only talking to you unofficially."

After some further conversation about general matters, the interview terminated. It had no other importance than as proving how useful it was to correct erroneous impressions about facts which you so thoroughly did, and as showing a real desire on the part of Lord Derby to adjust the matter temporarily so that extradition may go on pending negotiations at Washington.

The refusal to deliver Winslow was a blunder, and one which, I think, Lord Derby desires to correct upon the basis that he was misled about the real action which our Government had taken in the Lawrence case.

That Winslow will return and surrender himself within two weeks I have no doubt. I am not at liberty to write how it is to be brought about until it is accomplished. Then I shall be at liberty. The motives which bear upon Winslow to take this course are complex and curious.

I have the honor to be with great respect

Your Obedient Servant,

EDWARDS PIERREPONT

Two notes from Thornton to Fish, dated October 27, 1876

(Department of State Received Oct 28 1876)

Copy sent him at London
Feb. 23, 1877

File

Mr. Payson

Washington
October 27, 1876.

The Honourable
Hamilton Fish
&c &c &c

Sir,

I have the honour to inform you that I have received instructions from The Earl of Derby to state to you that

Her Majesty's Government desires the negotiation and conclusion of a new Extradition Treaty between Great Britain and the United States, and with that object has authorized me to submit to you certain proposals on its part and to confer with you with a view to their acceptance by the government of the United States.

I shall therefore be ready to wait upon you for this purpose whenever it may be convenient to you, and, being instructed to assure you of the desire of Her Majesty's Government to conclude a Treaty with the United States upon this important subject with as little delay as possible, I venture to hope that our joint endeavours to secure this end may be crowned with success.

I have the honour to be, with the highest consideration,
Sir,

Your obedient Servant,

EDWD. THORNTON.

(Department of State Received Oct 28 1876)

Copy to London 31 Oct.

Mr. Payson

Washington
October 27, 1876.

The Honourable
Hamilton Fish
&c &c &c

Sir,

I have the honour to inform you that I have received instructions from The Earl of Derby to state to you that Her Majesty's Government, having regard to the very serious inconvenience and great encouragement to crime which would arise from the continued suspension of the Extradition of criminals between the British Dominions and the United States, will be prepared, as a temporary measure, until a new Extradition Treaty can be concluded, to put in force all powers vested in it for the surrender of accused persons to the Government of the United States under the Treaty of 1842, without asking for any engagement as to such persons not being tried in the United States for other than the offences for which Extradition has been demanded.

It is however to be borne in mind that each Government has the right laid down in the XIth Article of the Treaty of 1842, which provides that the Xth Article shall

continue in force until one or the other of the parties shall signify its wish to terminate it, and no longer.

I have the honour to be, with the highest consideration, Sir,

Your obedient Servant,

EDWD. THORNTON.

Draft of Treaty Headed "United States Draft, August 1876," filed under date of October 28, 1876

File under date Oct. 28, 1876.

This was handed to me by Sir Edward Thornton Oct. 28, 1876 *informally*—I agreeing thus to receive it, but not as a basis of negotiation, nor to be considered as the draft of a proposed treaty, but only as information of the present views of the Brit. Gov. & as an aid to negotiations thus when they may be entered upon

UNITED STATES.

DRAFT.

August 1876.

Draft of a Treaty of Extradition between Great Britain and the United States of America.

HER Majesty the Queen of the United Kingdom of Great Britain and Ireland, and the United States of America, having judged it expedient, with a view to the better administration of justice, and to the prevention of crime within their respective territories and jurisdictions, that persons charged with or convicted of the crimes hereinafter enumerated, and being fugitives from justice, should, under certain circumstances, be reciprocally delivered up; They have named as their Plenipotentiaries to conclude a Treaty for this purpose, that is to say:

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, the Right Honourable Sir Edward Thornton, a Member of Her Majesty's Privy Council, Knight Commander of the Most Honourable Order of the Bath, Her Envoy Extraordinary and Minister Plenipotentiary to the United States of America;

And the President of the United States of America, Hamilton Fish, Esquire, Secretary of State of the United States;

Who, after having communicated to each other their respective full powers, found in good and due form, have agreed upon and concluded the following Articles:—

ARTICLE I.

It is agreed that Her Britannic Majesty and the United States shall, upon mutual requisition by them or their Ministers, officers, or authorities respectively made, deliver up to justice all persons who, being charged with or convicted of any of the crimes enumerated in the schedule annexed to this Article, committed within the jurisdiction of either, such persons being actually within such jurisdiction when the crime was committed, shall seek an asylum or shall be found within the jurisdiction of the other. Provided that

attempt
assault with intent to commit

16. Threats by letter or otherwise with intent to extort.

17. Piracy, by law of nations committed on board of or against a vessel belonging to the nation asking extradition.

18. Criminal sinking or destroying such a vessel at sea, or attempting ~~or conspiring~~ to do so.

19. Assaults on board such ~~ship~~ on the high seas, with intent to destroy life.

20. Revolt, or conspiracy to revolt, by two or more persons on board such a ~~ship~~ on the high seas against the authority of the master.

ARTICLE II.

If the fugitive criminal who has been committed to prison be not surrendered and conveyed away within two months after such committal (or within two months after the decision of the Court, upon the return to a writ of habeas corpus) he shall be discharged from custody, unless sufficient cause be shown to the contrary.

ARTICLE III.

ARTICLE IV.

~~A fugitive criminal shall not be surrendered if the offence in respect of which his surrender is demanded is one of a political character, or if he prove that the requisition for his surrender has in fact been made with a view to try or punish him for an offence of a political character.~~

ARTICLE V.

The surrender shall not take place if, since the commission of the acts charged, the accusation, or the conviction, exemption from prosecution or punishment has accrued by lapse of time, or other lawful cause, according to the laws of the place where the crime was committed.

ARTICLE VI.

The provisions of the Treaty shall not apply to any crime or offence committed prior to the date when it shall be brought into operation, other than those enumerated in Article X of the Treaty between Great Britain and the United States, concluded at Washington on the 9th of August, 1842.

This hardly important enough to retain.

omit or conspiring

vessel

vessel

ARTICLE VII.

If the individual claimed by one of the two Contracting Parties, in pursuance of the present Treaty, should be also claimed by one or several other Powers, pursuant to Treaty stipulations, on account of other crimes committed within their jurisdiction, his surrender shall, in preference, be granted in compliance with that (demand ~~of the Diplomatic Agent~~) which is earliest in date; unless any other arrangement should be made between the Governments which have claimed him, either on account of the gravity of the crimes committed, or for any other reasons.

ARTICLE VIII.

If the individual claimed should be under prosecution, out on bail, or in custody, for a crime or offence committed in the country where he may have taken refuge, or if a warrant for his arrest upon a criminal charge has been obtained in good faith, and with intent to proceed thereupon without delay, his surrender may be deferred until he shall have been set at liberty in due course of law.

In case he should be proceeded against or detained in such country, on account of obligations contracted with persons, whether individual or corporate, his surrender shall nevertheless take place, the complainant retaining his right to prosecute his claims before the competent authority.

ARTICLE IX.

~~Everything found in the possession of the individual claimed at the time of his arrest, that may be material as evidence in making proof of the crime, shall be seized, in order to be delivered up with his person at the time when the surrender shall be made. The Magistrate, Justice, Judge, or Commissioner before whom the party shall be brought, as provided [in the preceding Article] of this Treaty, shall determine what things shall be delivered up, in pursuance of this Article, with the person of the individual claimed.~~

ARTICLE X.

The stipulations of the present Treaty shall be applicable to all Foreign or Colonial possessions of either of the two High Contracting Parties.

The requisition for the surrender of a fugitive criminal who has taken refuge in a Foreign or Colonial possession of either Party, shall be made to the Governor or Chief

In ~~the~~ Colonial Possessions the demand is to be made by a requisition Consular Officer

~~Article one~~

Authority of such possession by a Consular Officer of the other, within the jurisdiction of such Governor or Chief Authority; or, if the fugitive has escaped from a Foreign or Colonial possession of the Party on whose behalf the requisition is made, by the Governor or Chief Authority of such possession. But no such requisition shall be made by a Consular Officer who is not authorized by his Government to make such requisitions.

Such requisitions may be disposed of, subject always, as nearly as may be, to the provisions of this Treaty, by the respective Governors or Chief Authorities.

The Contracting Parties shall, however, be at liberty respectively to make special arrangements in all their respective Colonies and Foreign possessions for the surrender of fugitive criminals who may take refuge within such Colony or possessions, on the basis, as nearly as may be, of the provisions of the present Treaty.

ARTICLE XI.

The present Treaty shall come into operation two months after the exchange of the Ratifications. After the Treaty shall so have been brought into operation, Article X of the Treaty concluded between the High Contracting Parties on the 9th of August, 1842, shall be considered as cancelled, except as to any proceeding that may have already been taken or commenced in virtue thereof.

Either Party may at any time terminate this Treaty on giving to the other six months' notice of its intention.

ARTICLE XII.

The present Treaty shall be ratified, and the Ratifications shall be exchanged at Washington as soon as may be thereafter

In witness whereof, the respective Plenipotentiaries have signed the same, and have affixed thereto the seals of their arms.

Done at , the day of in the year of Our Lord one thousand eight hundred and seventy-

Note from Fish to Thornton, dated October 30, 1876

Department of State,
Washington, 30 October, 1876.

The
R. H. Sir Edward Thornton, K. C. B.
&c. &c. &c.

Sir:

I have the honour to acknowledge the receipt of your note of the 21st instant, wherein you inform me that you have received instructions from Lord Derby to state that Her Majesty's government will be prepared as a temporary measure until a new Extradition Treaty can be concluded, to put in force all powers vested in it for the surrender of accused persons to the government of the United States under the treaty of 1842, without asking for any engagement as to such persons not being tried in the United States for other than the offences for which extradition has been demanded.

Your note also calls attention to the provision laid down in the XI Article of the treaty of 1842, that the X Article shall continue in force until one or the other of the parties shall signify its wish to terminate it, and no longer.

I have laid your note before the President who observes with great satisfaction that Her Majesty's government has decided to use its powers for the surrender of fugitive criminals without asking any stipulations or engagements in the nature of those, which in recent correspondence with reference to the requisition made by the United States in the case of Winslow and others, had compelled him, with extreme regret and reluctance, to reach the conclusion that under the position then taken by the British government, if it be adhered to, it would not be possible for the government of the United States either to make demands on Her Majesty's government for the surrender of fugitive criminals, or to entertain requisitions of that character from Her Majesty's government under the treaty.

The President concurs fully with Her Majesty's government in its appreciation of the very serious inconvenience, and the great encouragement to crime arising from the failure of the extradition of criminals between two States whose relations of business and of social intercourse are as close and as intimate as those which happily exist between the United States and Her Majesty's dominions; and he greets the decision of Her Majesty's government,

announced in your note, to ask no engagement with regard to the trial of persons surrendered, as the removal of the obstacle which arrested the execution and efficiency of the Extradition Article of the treaty of 1842.

He hopes, therefore, that Her Majesty's government will now take into consideration the applications heretofore made by the United States for the surrender of Winslow, and Brent and Gray, with regard to each of whom the evidence of criminality has been duly furnished and heard, and was found sufficient to justify his apprehension and commitment for trial in accordance with the requirements of the treaty. On an indication of readiness to surrender those persons he will authorize an agent to receive them, and will be ready and glad to respond to any requisitions which may be made on the part of Her Majesty's government under the Xth Article of the treaty of 1842, which he will then regard as in full force until such time as either government shall avail itself of the right to terminate it provided by the XIth Article, or until a more comprehensive arrangement can be reached between the two governments in regard to the extradition of criminals —an object to which he will be glad to give the attention of this government with his most earnest desire for a mutually satisfactory result.

I have the honor to be, with the highest consideration, Sir,

Your obedient servant,

HAMILTON FISH.

Dispatch No. 49, Fish to Pierrepont, dated October 31, 1876

A. No. 49. Department of State,
Washington, October 31, 1876.

Edwards Pierrepont, Esquire
&c. &c. &c.

Sir:

I enclose, herewith, for the information of your Legation, and for preservation in its archives, a copy of a note from Sir Edward Thornton, under date of the 27th instant, announcing the readiness of the British Government, as a temporary measure, until a new Treaty of Extradition can be concluded to put in force the powers vested in it, for the surrender of fugitive criminals under the Treaty of 1842 without asking for any engagement as to the trial of such

criminals for other than the offenses for which extradition shall have been demanded, also a copy of the reply thereto under date of the 30th instant.

It seems from the note of Sir Edward that the British Government has wisely reconsidered the position which it had been led to assume in the recent case of Winslow.

I am, Sir, Your obedient servant,

HAMILTON FISH.

Enclosures:

Sir Edward Thornton to Mr. Fish, October 27, 1876.
Mr. Fish to Sir E. Thornton, October 30, 1876.

Telegram, Fish to Pierrepont, dated November 1, 1876

C. Telegram Washington, Nov'r 1, 1876.

Pierrepont,
Minister—London.

(Confidential.)

Thornton by note proposes resumption extradition under treaty, without demanding stipulations, as in Winslow's case. Have replied expressing satisfaction with decision to remove obstacle to extradition, with hope that Winslow, Brent and Gray will now be surrendered, and stating on receiving indication of readiness so to do Agent will be authorized to receive them, and thereafter we will be ready to grant requisitions.

Copy correspondence sent by mail. Make no advances, watch question if notified of any steps to surrender fugitives, advise me promptly.

FISH,
Secretary.

Dispatch No. 50, State Department to Pierrepont, dated November 3, 1876

No. 50. Department of State,
Washington, November 3, 1876.

Edwards Pierrepont, Esquire
&c. &c. &c. London

Sir:

Your telegram of the 30th October, announcing that you had had an interview on the second of that month with Ezra D. Winslow, was received on the 31st, and was the

first information received at this Department of the important fact. I await with interest further details which it is hoped have been forwarded by mail. The nature of the question between the two Governments, in connection with which Winslow has become the prominent subject, has made every incident in his movements or probable action of interest and of importance, and it is to be regretted that the Department was not earlier and more fully advised of the fact, and of the details of his interview with you on the second of October. The serious importance of such information, and the bearing of all Winslow's proceedings * * *

Dispatch No. 119, Pierrepont to Fish, dated Nov. 16, 1876

No. 119 Legation of the United States
London November 16th 1876

Hon Hamilton Fish
Secretary of State
&c &c &c
Washington D. C.

Sir.

I have the honor to state that the copy of the correspondence between you and Sir Edward Thornton upon the Extradition matter accompanying your Despatch No. 49, reached me on Monday the 13th instant.

I do not see why Extradition will not be returned. It is certain that Winslow and the other fugitives will be surrendered, if in England, unless the Court of Queen's Bench on Habeas Corpus, holds that the English Statute of 1870 operated upon the Treaty made between the United States and Great Britain in 1842, of which there is not the slightest probability.

The fact that the accused have been once discharged can make no difference. They have not been *tried* and discharged as innocent. On the contrary their *prima facie* guilt was fully established.

Up to this time the reports of those employed to find out about Winslow have been, that he disappeared some weeks ago and has not since been seen in London.

My own belief is that he is in the United States or the British Provinces where he can freely communicate with his friends and counsel in Boston, and that he will surrender himself, if he has not done so already.

I have the honor to be with great respect

Your Obedient Servant,

EDWARDS PIERREPONT.

Dispatch No. 62, Fish to Pierrepont, dated November 25, 1876

No. 62. (Confidential) Department of State,
Washington, November 25, 1876.

Edwards Pierrepont, Esquire
&c. &c. &c.

Sir:

The instruction from this Department No. 49, under date of the 31st October, enclosed to you a copy of a note of the 27th of that month from Sir Edward Thornton, addressed to me, on the subject of the extradition treaty between the two governments.

I now give, for your information, and for the purpose of preservation in the archives of your Legation, the substance of a conversation between Sir Edward Thornton and myself on the day of the date of his note above referred to, and also on the occasion of several subsequent interviews.

On the 27th October he called at the Department of State, and read to me an instruction to him from the Foreign Office, the purport of which was set forth in his note to me of that date. He then read to me another instruction, which he desired me to consider as private information, which was not to be known officially or officially referred to; in which his Government says that in case of any trials of a surrendered criminal for other offense than that for which he is surrendered, they will feel bound to terminate the treaty; that they are prepared to make surrenders without asking any condition or stipulation and think that the courts would sustain them in so doing, but that in case, which they thought improbable, the Courts should otherwise decide they would be unable to make surrenders.

Referring to the instruction which had been officially read, I remarked that the Treaty of 1842 had not been denounced; that on the part of Great Britain an attempt had been made to attach conditions to its execution which we held inconsistent with the terms of the treaty, and which I now understand that they are ready to abandon.

I read him that part of the President's message on that subject.

Conversation then turned upon the effect of the instruction which he had privately and unofficially read, which we both agreed would embarrass an agreement, if officially brought to our notice.

He therefore desired me to consider that I knew nothing about it, and inquired what answer I would make if he were to address me a note in the sense of the instruction he had read.

I stated what would be the general nature of my reply, as subsequently written in my note of 30th October, of which a copy was enclosed in despatch No. 49.

He remarked that my letter would make the renewal of the treaty contingent on the surrender of Winslow, and that if he should have escaped, its reinforcement would thereby be prevented. I replied that if we should be satisfied that he had escaped without any suspicion of collusion of British officials, which of course I considered as impossible, and it should be made to appear that the British Government had in good faith sought to arrest Winslow, a declaration on their part to that effect, accompanied with an expression of their desire to arrest and deliver might possibly be accepted as satisfactory.

He made an appeal not to impose too severe terms, that it was evident his government was making very great concessions.

I told him that we desired to impose no unpleasant condition, but must maintain the position we had assumed, and which it was evident Great Britain now admitted to have been correct. That we sincerely desire to meet them frankly, fairly and in friendly spirit, that the President had presented to Congress his conclusions, and he would readily perceive that he could not act in variance therewith, but that I was prepared to meet him in the direction which I had indicated.

On the 28th October his note of the 27th was received at the Department, and mine to him of the 30th followed. He was absent from Washington from the 31st until about the 10th of November.

On the 13th of this month he called at the Department, and said that he had received a telegram from Lord Derby, instructing him to communicate to me officially the instruction which he had referred to in the interview of 27th **October** ~~November,~~ but had then requested me to consider as not communicated or known.

I suggested to him before making any such communication to me, to consider the inconveniences which would necessarily follow: that the reference in his note to me of the 27th October to the right reserved by the XIth Article of the treaty of 1842 to terminate the Extradition Article of that treaty was sufficiently significant, and necessarily put this government on its guard, as to any posible exercise

of the right, for whatever cause the British Government might think proper; that the discussion and correspondence arising between the two governments in the Winslow case had suggested the possibility referred to in Lord Derby's note confidentially and unofficially shown, as the probable causes for the possible exercise of the right reserved by the XI article without making direct allusions to differences which had been the subject of passed controversy, and therefore did not impose upon us the necessity of further dissension; but, as had been done in my reply to his note of October 27th, I had recognized the existence of the right to terminate the Extradition Article on notice, with or without the assignment of reasons therefor; should however, Lord Derby's instruction of which he had confidentially given me notice be officially communicated, it would be impossible for me to avoid a reply which might open a correspondence that would delay and possibly prevent the solution of the question which we were, and I had no doubt his government was anxious to reach.

He had the paper in his pocket and proposed submitting it again, for the same confidential and unofficial information, so that all official knowledge of it might be entirely disclaimed, I advised him however not to produce it, as I thought I was sufficiently possessed of its general purport to be assured that its official communication would compel a reply, and at the same time to be equally assured that the right reserved under the XIth article of the treaty fully covered the possibility contemplated in the note.

He agreed to telegraph to Lord Derby the purport of the conversation.

I further stated to him that should we succeed in reinvigorating the treaty of 1842, I felt great confidence we would be able within a very short time to sign a new treaty in which case the reservation of the XIth article and the execution of the Xth would continue for a very short period whereas if we entered upon correspondence I feared there would not be time between now and the 4th of March to complete a new treaty.

The next conversation with Sir Edward Thornton on the subject of extradition was on the 16th of this month, the purport of which was communicated to you in confidential instruction No. 56 of the 17th of November.

On Thursday afternoon (23d) after I had left the office Sir Edward Thornton called at my house and said that he had a telegram from Lord Derby stating in substance that Her Majesty's Government would be satisfied if in an official despatch he should report that he had stated

to me that in the proposed arrangement for putting the Extradition Treaty in force in accordance with his (Thornton's) note of the 27th October it must not be understood to recede from the interpretation which in previous correspondence it had put on the Extradition Treaty. I replied that I saw no objection to his so saying, although the fact that they were willing to give up the men whom they had once refused on the ground that they were not at liberty by law and could not surrender, was a direct contradiction of the former opinion but that was their concern, not mine; that should he make this statement to me officially I should reply in substance that we also adhered to the views we had expressed but if the men were surrendered it would reinvigorate the treaty and we would thereupon be ready to negotiate a more comprehensive one.

He left me under an appointment to meet the following morning and during the interval he would formulate and submit to me what he proposed to say to Lord Derby.

On Friday (yesterday) he called at the office and showed me a draft of a note to Lord Derby in which he proposed to make the statement which he supposed would be satisfactory, of which the following is a copy:

"Washington, November 23, 1876.

The Earl of Derby

My Lord:

"I have the honor to inform Your Lordship that I have stated to Mr. Fish that in entering into the temporary arrangement with regard to extradition which in accordance with your instruction I proposed in my note to him of the 27th ultimo, Her Majesty's Government must not be understood to recede from the interpretation which in its previous correspondence it has put upon the treaty but that having regard to the prospects of a new treaty and the power of denouncing the old treaty possessed by either party, it is willing to enter into this arrangement."

I then read to him the following which I had prepared as the reply which I made to his communication that the British Government must not be understood, in entering into the proposed arrangement, to recede from the interpretation which in previous correspondence it had put upon the Extradition Treaty. I read to him as follows:

"We too adhere to the construction which in our correspondence we put upon the treaty and while I regret that I was not able to persuade Her Majesty's Government to adopt our views of its true construction, I am glad

to know that earnestly as each presented its views, the manner of presentation has created no irritation and has left no cause on either side of complaint on its account.

"Hitherto neither government has availed itself of the right to which Lord Derby refers reserved by the XIth article to terminate the extradition provision of the treaty which either party might have done or may at any time do on notice, with or without assignment of cause.

"The President has felt that while Great Britain refused to surrender the persons demanded as those were, who were the subject of the correspondence he could not make demands or entertain requisitions under the treaty.

"The surrender of those persons as Great Britain now expresses a willingness to make, will however remove all obstructions to its execution and will reinvigorate the treaty - - - leaving differences of opinion as to its proper construction to be entertained as either government may construe its obligations and leaving either party at liberty to terminate it at pleasure in accordance with the XIth article.

"Any difference of construction which may exist may however be speedily placed among the things of the past by the celebration of a more comprehensive arrangement, the negotiation of which the United States is ready to enter upon, as soon as the Extradition Article of the treaty of 1842 shall again be put into practical operation."

He said he thought this would be entirely satisfactory, and that he would telegraph it, or its purport, to his government.

I inquired whether I was correct in understanding that on his communicating this statement to his government they would be prepared to surrender Winslow, and the other men, to which he replied that he understood that to be their purpose and intent.

I then asked whether he was so well assured as to justify me in telegraphing to you that in case the offer of surrender be made you should at once appoint an agent to convey them to the United States. He answered by advising me by all means thus to telegraph. Accordingly I sent you last evening the cipher telegram, of which a translation is subjoined.

I am, Sir,

Your obedient servant,

HAMILTON FISH.

Enclosure:

Copy of telegram of November 24, 1876.

Dispatch No. 81, Pierrepont to Fish, dated Dec. 7, 1876

No. 81

Legation of the United States
London December 7th, 1876

Hon. Hamilton Fish
Secretary of State
&c. &c. &c.
Washington, D. C.

Sir,

The extradition of persons charged with crime can now be carried on under the Treaty of 1842 between Great Britain and the United States as promptly and as easily as before the interruption. Warrants are out for the arrest of Winslow and Gray and Brent has already been arrested, heard and committed to await the fifteen days which the law requires when he will be delivered over to an agent of the United States under a Warrant of Extradition precisely the same as in all former cases and without any stipulations or conditions whatever. This is due to the attitude which you assumed and maintained from the beginning; namely: that the British Act of 1870 could not affect the Treaty concluded between the United States and Great Britain in 1842 and that no stipulation or condition required by that act could have any binding force upon the government of the United States or be claimed by England in the execution of that Treaty. The question was several times discussed while I was a member of the cabinet at Washington and as matter of international courtesy, it was determined to direct the District Attorney of New York to try Lawrence, who had been extradited upon the charge of forgery first: upon that charge only and leave all action upon other charges to be determined by the Government after trial upon the extradited charge. I, as Attorney General, gave orders accordingly. After my appointment as Minister to England I went with Judge Taft who was appointed Attorney General in my place to New York and Lawrence offering to plead guilty upon the charge of forgery it was arranged that all other charges should be dismissed. This arrangement was carried out and Lawrence pleaded guilty to the indictment for forgery and after that no charges were pending against him. I found that the British Cabinet were in error about the facts in the Lawrence case and it seemed to me that they were conscious of their mistake in refusing to surrender Winslow and others in the mode they did. After your despatch No. 15 (a copy of which I gave

to Lord Derby) concisely setting forth the facts in the Lawrence case and then correcting the misapprehension under which he had labored, I was satisfied that extradition would be resumed under the old Treaty. It has been done by the act of the British Government creditable to their sense of justice and highly complimentary to your firm and courteous conduct of the negotiations which had become very delicate & difficult.

I have the honor to be with great respect

Your obedient Servant,

EDWARDS PIERREPONT.

Telegram, Pierrepont to Fish, dated December 8, 1876

Mr. Payson

TELEGRAM

London, Dec. 8th, 1876.

Fish, Secretary, Washington

Private—Extreme desire here to conclude new treaty with you, so as to shield against attack for blunder and back down. The Party will assail blunder ~~both~~ **with** the back down. New treaty may smooth all. Hence their urgency. Russia and fear of Parliament make them sensitive. Lord Carnarvon recently cabled Toronto extradition resumed. Can't learn whence Mrs. W's cable. She sailed under own name.

PIERREPONT.

Despatch No. 84, Pierrepont to Fish, dated Dec. 8, 1876

No. 84

Legation of the United States,
London, December 8th, 1876.

Hon. Hamilton Fish,
Secretary of State,
&c., &c., &c.,
Washington, D. C.

Private.

Sir,

I have been able to learn the fact that a communication such as Sir Edward Thornton mentioned, was prepared to be sent to me but was withheld. The reason for

withholding it I can only conjecture; but from various trifles which have fallen out in my conversations with different members of the Ministry, I suspect that the true solution is about this: namely: The ground first taken by Lord Derby was, that the Act of Parliament of 1870 required a stipulation before the surrender of the accused whose extradition was claimed by our Government under the Treaty of 1842. It was asserted that this Act of 1870 bound the Ministers of the Crown as *matter of law,* to exact the stipulation before the prisoner was delivered for extradition to the United States: Then, under the influence of the Lord Chancellor, as I have reason to believe, this doctrine was abandoned and the right to demand conditions was placed upon the vaguest ground of reason, authority of text writers and suggestions about International law: Then, all these claims were abandoned and Lord Derby resolved to surrender the fugitives under the Treaty of 1842 just as formerly and without any conditions whatever. A little reflection showed that this might prove an awkward business if the Court of Queen's Bench on Habeas Corpus should hold that *as matter of law* the prisoners must be discharged unless the conditions mentioned in the Act of 1870 were complied with; and, (I happen to know,) it was suggested, that whatever views Lord Cairns might entertain of the law, "the "Lord Chancellor" had no voice in the Queen's Bench," and that it would be a *double blunder* for the British Ministry, first, to refuse to extradite on the ground that the Law did not permit Extradition without a stipulation, then, to abandon that ground and put the refusal upon a totally different one; then to admit that *all* the objections heretofore urged were untenable, when after all the Queen's Bench might discharge the prisoners upon the very legal ground upon which Lord Derby at first refused to surrender them; and hence, I think, they delayed, in order to sound the judges upon the question of law which might arise upon Habeas Corpus under the Act.

From the middle of August to the middle of November almost everybody connected with the Government is much of the time out of town, and during the Autumn I seldom met Lord Derby and when I did meet him, he was absorbed in the "Eastern Question" and said so little about Extradition that I had but little to report.

I have the honor to be with great respect

Your obedient servant,

EDWARDS PIERREPONT.

Cable, Pierrepont to Fish, dated December 14, 1876

Cable.

London, December 14, 1876.

Fish, Secretary, Washington.

We have refused all information to reporters about Extradition, which they don't like, and boast they have got from police and foreign office, all they want. We don't know what they have cabled. They intimate something about cipher telegram, which must relate to yours last March in Brent's case.

PIERREPONT

Note from Fish to Thornton, dated December 23, 1876

Department of State,
Washington, Decr. 23, 1876.

The
R. H. Sir Edward Thornton, K. C. B.
&c. &c. &c.

Sir:

Referring to your note of the 27th of October, ultimo, and to my reply of the 30th of that month, and to your note of November 29, in which you did me the honor to inform me of the issuing of an order in London, for the arrest of the three criminals, who had been previously discharged by Her Majesty's Government, and who had been the subject of the late correspondence on the question of extradition, I have now the honor to inform you that further information has been received of the arrest of Brent, and of his surrender, by Her Majesty's Government, to the person authorized to receive and convey him to the United States.

It is understood that Winslow and Gray, the two other fugitives for whom warrants were also issued, have escaped from or are concealed in Great Britain and cannot be found.

The Representative of the United States in London, has informed me of the sincere desire of Her Majesty's Government to cause their arrest, which, however, it has not been possible to effect.

Under these circumstances, and in accordance with the statements contained in my note of the 30th of October last, the President will now be ready to respond to any

requisitions which may be made on the part of Her Majesty's Government under the Tenth Article of the Treaty of 1842, and will hereafter make similar requisitions upon Her Majesty's Government, as heretofore, under the treaty, and will again regard the treaty, as in full force, subject to the right reserved to either party, to terminate the same, pursuant to the Eleventh Article thereof.

I have great satisfaction in conveying to you this information, and in being able to state that no obstacles now exist in delivering up to justice fugitive criminals under the treaty of 1842, until such time as the two Governments may be enabled to perfect, and enter into a more comprehensive arrangement.

I have the honor to be with the highest consideration, Sir,

Your obedient servant,

HAMILTON FISH.

Telegram, Cadwalader to Pierrepont, dated December 23, 1876

C. Telegram Washington, Dec. 23, 1876.

Pierrepont
Minister—London.

Thornton informed of Brent's surrender and that President will now be ready to respond to and make requisitions under tenth Article treaty of 1842, subject to provisions of eleventh article.

Have requested surrender Maraine Smith, detained in Canada, and propose to proceed as heretofore under treaty.

CADWALADER,
Acting Secretary.

Note from Thornton to Fish, dated December 24, 1876

(Department of State Dec 25 1876 Received)

Washington
December 24, 1876.

The Honourable
Hamilton Fish
&c &c &c

Sir,

I have the honour to acknowledge the receipt of your note of yesterday's date, informing me of the arrest and

surrender by Her Majesty's Government of the forger Brent, and that the other two fugitives, Winslow and Gray, for whom Warrants were also issued, have escaped from, or are concealed in, Great Britain and cannot be found.

I beg to express my satisfaction that under these circumstances the President will again regard the Xth Article of the Treaty of 1842 as in full force, subject to the right reserved to either party to terminate the same pursuant to the XIth Article thereof.

I last night communicated to The Earl of Derby by Telegraph the substance of your note above-mentioned, informing him at the same time that the Government of the United States is now ready to make and to receive requisitions for the surrender of fugitive criminals as heretofore.

I have the honour to be with the highest consideration, Sir,

Your obedient Servant,

EDW'D. THORNTON.

Dispatch No. 77, Cadwalader to Pierrepont, dated December 27, 1876

No. 77

Department of State,
Washington, December 27, 1876.

EDWARDS PIERREPONT, ESQUIRE
&c. &c. &c.

Sir:

Upon the receipt of your telegram of the 23rd instant, stating that Brent having been delivered up had sailed from Liverpool in the steamer "Parthia," a note was addressed to Sir Edward Thornton, informing him of the fact of the surrender of the fugitive and his departure for the United States, as well as that Winslow and Gray, for whom warrants had been issued could not be found, and stating that the President would now be ready to respond to any requisitions preferred by Her Majesty's Government, and would hereafter make similar requisitions under the treaty, and regard the treaty as in full force, subject to the right reserved to either party to terminate the same, pursuant to the eleventh article thereof, I informed you immediately of the substance of the note by telegraph, on its transmission on the 23rd.

A copy of the note in question and of Sir Edward's reply thereto is herewith enclosed.

At the same time a note was addressed to the British Representative with reference to Maraine Smith, who has been held for a long time, as you know, and requesting his surrender.

A copy of this note and of Sir Edward's reply thereto, is also enclosed herewith.

Upon the 26th the British Minister himself addressed the Department, asking that a warrant might be issued for the arrest and detention of one Alfred Brush, a fugitive from the justice of Canada, with a view to his extradition, and a warrant or mandate from this Department was issued the same day.

Extradition appears therefore to have been fairly re-established between the two countries under the tenth article of the treaty of 1842.

The President transmitted to Congress upon the 26th instant a special message with reference to extradition, accompanied by copies of the late correspondence on the subject. As soon as printed copies are obtained of the correspondence and message copies shall be transmitted.

The President reviews the question and announces that he will hereafter entertain and make requisitions for the surrender of fugitive criminals.

I am, Sir, Your obedient servant,

JOHN L. CADWALADER,
Acting Secretary.

Enclosures:

Mr. Fish to Sir Edward Thornton, Dec'r. 23, 1876.
" " " " "

Sir E. Thornton to Mr. Fish, Dec'r. 24, 1876.
" " " "

Note from Fish to Thornton, dated December 28, 1876

Department of State,
Washington, December 28, 1876.

The

R. H. Sir Edward Thornton, K. C. B.
&c. &c. &c.

Sir:

Both Her Majesty's Government and the United States have frequently experienced the necessity and expressed

the desire for the conclusion of an arrangement for the extradition of fugitive criminals, more comprehensive, and better defined, than that furnished by the tenth article of the treaty of 1842.

Beneficial as this article has been in the past, the increased and daily increasing intercourse between the two countries demands an arrangement of enlarged scope, and comprising a more extended list of crimes, while the differences of construction and interpretation, to which the tenth article of the treaty of 1842 has of late unfortunately been subjected, render it of the highest importance that a new arrangement should be made, freed from all the questions which have arisen in connection with the subject.

In this view from the correspondence which has passed between us and from our interviews and conversations on the subject, I feel assured that the two governments are entirely in accord.

The late differences which have arisen between the two countries, and which threatened, and for a time suspended, the working of the extradition article of the treaty of 1842, having now been adjusted by the action of Her Majesty's Government I avail myself of the earliest opportunity to manifest to you the readiness and the wish of the Government of the United States to consider and conclude a new treaty which, while more comprehensive and better suited to the needs of both countries, shall put at rest and free the subject from all the questions which have heretofore arisen.

With this view, I have the honor to submit herewith, and to invite your consideration of a draft of a proposed treaty of extradition, which I hope may prove acceptable to Her Majesty's Government, and may furnish a satisfactory arrangement between the two countries. I shall be happy to meet you at any time to consider the terms and provisions of the draft proposed, with the earnest hope that we may reach a speedy agreement and be enabled to sign a treaty.

You are aware of the shortness of the present session of Congress, which will terminate on the third day of March next. I venture therefore to solicit an early consideration of the subject, in order to submit the result of the negotiation for the approval of the Senate of the United States at an early day, and before that body shall be en-

grossed by the pressure of business which is apt to be crowded upon it in the latter part of its session.

I have the honor to be, with the highest consideration, Sir,

Your obedient servant,

HAMILTON FISH.

Draft filed with notes from British Legation under date of Mch. 14, 1877.

Dispatch No. 97, Pierrepont to Fish, dated December 29, 1876

No. 97

Legation of the United States
London, December 29, 1876.

Hon. Hamilton Fish
Secretary of State,
Washington
D. C.

Sir,

I have the honor to inform you that upon the receipt of Mr. Cadwalader's cable of the 23rd instant advising me that the President of the United States in consequence of the surrender of Brent, "will now be ready to respond to and make requisitions under the Tenth article of the Treaty of 1842 subject to the provisions of the Eleventh Article of said Treaty," I acquainted Lord Derby of the President's readiness by Note, of which I herewith enclose a copy.

The Pall Mall Gazette of last evening, upon the Extradition question, says "The British Government" have made a "total and unconditional surrender." I enclose the Article.

I have the honor to be with great respect,

Your obedient Servant,

EDWARDS PIERREPONT.

Enclosures

1/97 Mr. Pierrepont to Lord Derby Dec. 25, 1876.
2/97 Extract from the Pall Mall Gazette Dec. 28, 1876.

Copy.

1/97

Legation of the United States
London, December 25th, 1876.

Right Honble.
The Earl of Derby
&c. &c. &c.

My Lord

I have the honor to acquaint you that I am advised by my Government that Charles Innis Brent having been surrendered by the Government of Great Britain to the United States under the Tenth Article of the Treaty of Eighteen Hundred and Forty Two, the President of the United States will now be ready to respond to and make requisitions under the said Tenth Article of the Treaty aforesaid as heretofore, subject to the provisions of the Eleventh Article of said Treaty.

I have the honor to be with the highest consideration,
My Lord,

Your most obedient, humble servant,

(signed) EDWARDS PIERREPONT.

2/97

PALL MALL GAZETTE.

Occasional Notes.

The presidential Message transmitting the extradition correspondence to Congress marks the close of the protracted and unfortunate difference which has occurred between England and the United States on a question which it is the interest of all civilized countries to keep clear of dispute. "It is with great satisfaction," the President says, "that I am able to announce to Congress and the country that by a voluntary act of her Britannic Majesty's Government the obstacles interposed to the execution of the extradition article have been removed. On the 27th of October Sir Edward Thornton, the British Minister, informed Mr. Fish that Great Britain would be prepared until a new treaty was concluded to enforce all the powers vested in it for the surrender of the accused persons under the treaty of 1842 without stipulations. I replied that on the indication of a readiness to surrender fugitives, I should be ready to respond to and make requisitions." In conclusion, the President hopes shortly to be able to conclude a new treaty of a broader and more comprehensive nature; and this last piece of intelligence is so satisfactory that we may per-

haps forbear to criticise the unsatisfactory process by which this conclusion has been reached. We cannot, however, help regretting that the British Government did not make this total and unconditional surrender (for such it is) of their position at an earlier date, if it was to be made at all. It is not a little unsatisfactory that they should have adhered to their objections just so long as to compel them to set at liberty the two refugees whose surrender was demanded by the United States Government upon criminal charges, and that, having been thus forced to release these persons, the objections should then have been withdrawn. It may be that the now expressed consent of the President to a revision of the treaty of 1842 is the consideration for the withdrawal; but we can scarcely imagine that if Winslow and Brent had been surrendered unconditionally, as the British Government have now seen their way to surrendering them, the United States Government would have been less willing to consent to a revision of the treaty than they are now, when one of the two accused persons is still at large, and may possibly never be recaptured. However, a new and more comprehensive treaty will be a distinct gain to both countries, however obtained, and we trust that no time may be lost in concluding it.

Dispatch No. 81, Fish to Pierrepont, dated January 5, 1877

B. A. No. 81.

Department of State,
Washington, 5 January, 1877.

Edwards Pierrepont, Esquire,
&c.; &c., &c.

Sir:

By No. 77 from this Department, you were furnished with a copy of the correspondence which has taken place between myself and Sir Edward Thornton, concerning the resumption of extradition under the treaty of 1842, and since that time both Governments have preferred demands, and the treaty may now be said to be again in full operation.

After this resumption had been effected, and upon the 26th of December, your No. 81 reached me treating of the subject and of the various causes which have led to the course pursued by the British Government.

You state that upon the receipt of my No. 15, under the date of *August 5*, setting forth the exact facts as to

Lawrence's case, and correcting the misapprehension under which Lord Derby and the authorities in Great Britain had labored as to the prosecutions which had been instituted against him subsequent to his extradition, you were satisfied that extradition would be resumed under the old treaty.

It is probably true that some misapprehensions had existed as to what had actually taken place with reference to Lawrence, and doubtless the explanations made on this point assisted toward their removal, and may have been not wholly without influence in leading to a reconsideration of the position which had been assumed by Great Britain. If so, its operation was not speedy, as the instruction was read to Lord Derby, the 23rd day of August, and it was not until late in November that the British Government receded from the posltion it had taken—Great bodies, however, move slowly.

You will perceive also that in the correspondence which actually led to the resumption of extradition, no reference is made by Her Majesty's Government to this particular point, and I am inclined to think while this matter may have contributed to the end attained, that Her Majesty's Government were not satisfied with the general position assumed by them on this question, and therefore did not rest their determination in changing upon so narrow a point. This is, of course, all the more creditable to Lord Derby and to the authorities who have contributed to this end.

In your No. 81, you also state that when Lawrence offered to plead guilty upon the charge of forgery, it was arranged that all other charges should be dismissed, that this arrangement was carried out, and that Lawrence plead guilty to the indictment for forgery, and after that no charges were pending against him. The actual conditions under which Lawrence did plead guilty, I understand to be, that when he plead guilty no charges were actually dismissed, but sentence was suspended against him, but it was understood that when sentenced, no further penalty than a two years sentence should be imposed in all. The matter remains in statu quo, sentence being still suspended and the charges against him not disposed of. Mr. Bliss from whom information has been sought, agrees in this statement.

I am, Sir, Your obedient servant,

HAMILTON FISH.

Despatch No. 92, Fish to Pierrepont, dated January 23, 1877

B. No. 92.

Department of State,
Washington, 23d January, 1877.

Edwards Pierrepont, Esquire
&c. &c. &c.

Sir:

From the enclosures of your No. 91, which gave information as to the successive step in the late extradition proceeding against Charles J. Brent, it appeared that Mr. Hoppin, the First Secretary of Legation, appeared before the Chief Police Magistrate at Bow Street, on the 30th of November, was sworn and examined, and in his examination produced a copy of the telegram from me of March 5, 1876, and stated among other things, that the telegram was in the cipher used by the Department of State, and that this government was then willing to receive the fugitive for the purpose of prosecution.

The proceedings attending Brent's surrender were peculiar, and while it would have been more logical had the authorities delivered him under the former committal of Sir Thomas Henry, or insisted upon an examination *de novo*, I can appreciate the circumstances which rendered it advisable to furnish proof of any facts which it was deemed by them necessary to prove.

At the same time when the report of Mr. Hoppin's examination as a witness and of his testimony appeared in the public prints they gave rise to comment and remark, both because the privilege of the diplomatic officer was waived by his appearance, and from the character of the evidence. An attempt at a cross examination of Mr. Hoppin as to the cipher of the Department of State would soon have placed him in a very embarrassing position.

I am not disposed to criticise, however, what was probably a peculiar necessity which may never occur again.

In this connection, however, in your No. 100, which reached me yesterday, you state that an information was sworn to by Mr. Day in the Lewis case on the 28th of December, and by Mr. Hoppin in the Conyugham case on the 3d of January instant, and that on such information warrants were issued against the accused.

The same questions present themselves here where diplomatic officers by swearing to the complaints may give rise to embarrassing questions.

Under the treaty of 1842, and the practice in Great Britain there may be no way to obtain a preliminary arrest

without swearing to a complaint and obtaining a warrant thereon, and it may be that there are no other persons so well qualified to do it as the Secretaries of Legation, but I do not quite perceive how, according to the course of administration of criminal law in this country, and I suppose it to be very similar in Great Britain, on the general information furnished by a telegram a complaint can be sworn to, which can state the facts sufficiently accurately to support an arrest, or how more can really be done than to lay a foundation to obtain a preliminary warrant.

The practice as stated by you seems to me to be objectionable, but in the absence of the proof or a person to swear to the complaint something of the kind may be required.

As we are now considering the question of a new treaty, I will thank you to inform me of the general practice on these points, with any suggestions which may occur to you in the premises.

I am, Sir,

Your obedient servant,

HAMILTON FISH.

Dispatch No. 95, Fish to Pierrepont, dated February 2, 1877

No. 95. Department of State,
Washington, February 2, 1877.

Edwards Pierrepont, Esquire
&c. &c. &c. London.

Sir:

I enclose for your information two copies of a proposed Extradition Treaty between the United States and Great Britain which was submitted to Sir Edward Thornton on the 28th of December last, together with a transcript of my note to him on the subject.

I am, Sir, Your obedient servant,

HAMILTON FISH.

Enclosure:

Mr. Fish to Sir Edw'd Thornton, Decr. 28, 1876.
Two copies of proposed Treaty.

Dispatch No. 128, Pierrepont to Fish, dated February 14, 1877

No. 128

Legation of the United States
London February 14th, 1877

Sir:

I have the honor to enclose a slip from the "Times" Newspaper of this morning giving the Report of a conversation last evening in the House of Lords between Lord Granville and Lord Derby in relation to the Extradition Treaty.

I have the honor to be with great respect,

Your obedient servant,

EDWARDS PIERREPONT.

Hon. Hamilton Fish
Secretary of State
&c &c &c
Washington
D. C.

THE TIMES, WEDNESDAY, FEBRUARY 14, 1877.

EXTRADITION TREATY WITH THE UNITED STATES.

Earl GRANVILLE.—My lords, I rise to put a question to the noble earl the Secretary of State for Foreign Affairs with reference to the Extradition Treaty with the United States. Your lordships will remember that last year Her Majesty's Government refused to surrender on extradition processes two men, named Winslow and Brett, unless the Government of the United States gave a distinct pledge that the person whose extradition was demanded should not be tried on any other charge than that in respect of which the extradition was granted. This was in consequence of a statement that a man named Lawrence, who had been already surrendered, was to be tried on a second charge. Since then one man has been surrendered; at least, it has been so stated, and I believe the statement to be true. I should, therefore, like to know what were the conditions under which that surrender was made, or whether any conditions were required. If a satisfactory arrangement has been entered into, I rejoice sincerely at the conclusion of the affair, and I think both Governments deserve great credit for having, by a little common sense, extricated the two countries from what would have been a public scandal. (Hear, hear.)

The Earl of DERBY.—My lords, the noble earl has put to me a question which, although the papers on the subject are ready for presentation, and have, indeed, just been laid on the table, it may still be convenient to your lordships I should answer; it may also be desirable that I should explain in a few words the position in which this business actually stands. Your lordships will remember how the matter stood last year. The extradition of a man named Lawrence was demanded by the American Government on a charge made against him. His extradition was granted on that charge, and he was put on his trial in the United States. While he was about to be put on his trial, a representation was made to us that steps were being taken by the United States Government to put him on trial for another offence in the event of failure to obtain a conviction on the charge in respect of which the extradition had been granted. Now, as the man had not been surrendered on that second charge, that raised the question as to the construction to be placed on the Treaty. We objected to the proceeding said to be contemplated by the United States Government, and that Government did not at the time deny the intention to put Lawrence on his trial in respect of the second charge; but they urged views in reference to the construction of the Treaty which led to the correspondence between the two Governments, which your lordships will recollect, and which led to a discussion in this House. The result was that we and the Government of the United States held opposite views as to the construction of the Treaty, inasmuch as they claimed a right which we held they were not entitled to claim, and we felt bound to refuse to grant any further extraditions till the question should be settled, and so matters remained for some time. Meanwhile, the man Lawrence was tried for the offence on which his extradition had been granted. I am not aware what became of him; but at all events there was no second trial. However, in the month of August last we received through the American Minister a communication from the United States Government which, if it had been made before, would have saved a great deal of trouble. From this communication it appeared that, notwithstanding the representations which had been made on the subject, yet, as far as the United States Government were concerned, no steps had been taken, or had been intended to be taken, with the view of putting Lawrence his trial for the second offence. In other words, the Government of the United States claimed a right under the Treaty which we did not admit the exist-

ence of; but they stated, and we did not doubt the accuracy of the statement, that they had not exercised, or attempted to exercise, the right they so claimed. That materially altered the position of affairs. We continued to maintain, and we maintain now, that the construction which we put on the Treaty was the correct one, but from the information we obtained in August, and which, I repeat, it is a pity we had not obtained at an earlier date, it appeared that the question raised by the United States Government was purely theoretical—that is, they having raised a point which had not arisen in practice, we thought that the question might well remain in abeyance till it did arise in actual practice. (Hear, hear.) We were of opinion that, in the circumstances really existing, there was no further occasion for suspending the operation of the Treaty, and it remains now as it was before. Had steps been taken under it by the United States Government inconsistent with the view held by us, then we should have continued to feel that the Treaty could only be renewed under the conditions suggested by us; but, as matters stood, we felt that those conditions were no longer required. (Hear, hear.) The arrangement between the two Governments continue as before that question was raised, pending the negotiations for a new Treaty, which negotiations are now in progress. That is the whole case. (Hear, hear.)

Note from Fish to Thornton, dated February 23, 1877

Department of State,
Washington, 23 Feby. 1877.

The R. H. Sir Edward Thornton, K.C.B
&c. &c. &c.

Sir:

The short time remaining of the present administration of this government, and the near approach of the end of the session of the Senate, will, I trust, be accepted as the justification of my thus asking your attention to the question of the new extradition treaty, to the negotiation of which this government was invited by that of Her Majesty.

In a note which you did me the honor to address to me on the 27th October last, you informed me of instructions received by you from the Earl of Derby,—stating that Her Majesty's government desired to negotiate and conclude a new treaty of extradition, and with that object had author-

ized you to submit to me certain proposals on its part and to confer with me with a view to their acceptancy and in a conversation on that day you informed me that your government had sent to you a proposed draft of a new treaty which might possibly be of service when negotiations should be opened, and enquired whether I would receive a copy. As the United States did not feel justified in entering upon formal negotiations for a new treaty while the old treaty was in the condition of suspense in which it had been placed, I replied that I would receive the copy informally, not as the basis of a new negotiation, but for information and as an aid to any efforts which might be made in the future toward the celebration of a new treaty. On the following day you kindly handed me a copy of the proposed draft.

Early in September previous, an expression of like desire on the part of Her Majesty's government, had been communicated by you to me in a personal interview; but while the United States shared fully with Her Majesty's government the appreciation of the great need of a comprehensive and efficient arrangement of extradition, and was desirous to perfect such arrangement, it could not, for the reason above indicated enter at that time upon a negotiation.

Another note from you of the same date (27th October) had informed me that "Her Majesty's government, having regard to the very serious inconvenience and great encouragement to crime which would arise from the continued suspension of the extradition of criminals between the British Dominions and the United States, will be prepared, as a temporary measure, until a new extradition treaty can be concluded, to put in force all powers vested in it for the surrender of accused persons to the government of the United States under the treaty of 1842, without asking for any engagement as to such persons not being tried in the United States for other than the offences for which extradition has been demanded."

On the 30th October, I had the honor in reply to your last mentioned note to say: "The President concurs fully with Her Majesty's Government in its appreciation of the very serious inconvenience and the great encouragement to crime arising from the failure of the extradition of criminals between two States whose relations of business and of social intercourse, are as close and as intimate as those which happily exist between the United States and Her Majesty's Dominions, and he greets the decision of Her Majesty's government, announced in your note, to ask no engagement with regard to the trial of persons surrendered,

as the removal of the obstacle which arrested the execution and efficiency of the extradition Article of the Treaty of 1842."

The temporary limitation which Her Majesty's government emphatically attached to the revival of the treaty, was constantly insisted upon, and accepted by the United States.

On the 29th of November you informed me of the receipt of a telegram telling you that orders had been issued for the arrest of the three criminals whose surrender had been asked in the preceding spring but had been denied because of the refusal of the United States to enter into stipulations not within the contemplation of the treaty, which denial of surrender had led to the suspension of the efficacy of the treaty.

On the same day Lord Derby informed Mr. Pierrepont that "the Home Department has felt warranted in issuing orders for the apprehension of Winslow, Brent and Gray, whose extradition has been requested by the United States government."

Being thus assured that the obstacles which had interrupted and suspended the operation of the treaty of 1842 were about to be removed, and in view of the short time during which the Senate would be in session, and of the temporary character which Her Majesty's government assigned to the revival of the treaty (which you will remember had at one period during our previous conversations been placed by Her Majesty's government at one year), I prepared a draft of a treaty to be ready for submission to you, so soon as the treaty of 1842 should be re-enforced by the actual surrender of one or more of the persons whose surrender had been refused.

After the arrest of Brent and his committal awaiting the period required by law for his actual surrender, I handed to you informally, on the 13th of December, a printed copy of this treaty for information and consideration with a view to expedite the negotiation which both governments had expressed much earnest desire to accomplish, when the time should arrive when we might enter formally upon its consideration.

Brent sailed from Liverpool in charge of the agent of the United States on Saturday the 23rd of December. Christmas intervening, I availed of the earliest moment after my return to Washington, and on the 28th December had the honor to address you a note formally submitting to you a copy of the proposed treaty which it was hoped might prove acceptable to Her Majesty's government and put at

rest all questions that had theretofore arisen. Several conferences took place between us during which you informed me that you had transmitted a copy of the proposed treaty to London; and on a more recent occasion you suggested as I understood by way of inquiry but not by instruction from your government, one or more slight amendments or additions, but I am still without information as to the views of Her Majesty's government with reference to the subject, on which this government fully shared the desire which we were assured was that of Her Majesty's government, that it should be accomplished with as little delay as possible, and which has engaged much of the attention of both governments for a long period.

Both by note and in conversation, the reinvigoration of the treaty of 1842, was urged by Her Majesty's government as only a "temporary measure," and as an inducement to a new and more comprehensive arrangement, on which I had been led to believe that Her Majesty's government was prepared many months since to enter upon a settlement. I venture, therefore, to request if it be possible, to be informed within the few days which remain of the present session of the Senate, of the views of Her Majesty's government on this subject—not only because it would be highly satisfactory to definitely settle and adjust all questions between the two countries concerning extradition by the negotiation of a new treaty, but also because I cannot but feel that the temporary arrangement now existing is liable to be interrupted by the recurrence of questions similar to those which have heretofore embarrassed and suspended for a time the working of the treaty of 1842, and which have proved a hindrance to the administration of justice.

I have the honor to be with the highest consideration,
Sir,

Your obedient servant,

HAMILTON FISH.

Dispatch No. 107, Fish to Pierrepont, dated February 23, 1877

A.B. No. 107. Department of State,
Washington, 23 February 1877.

Edwards Pierrepont, Esquire
&c. &c. &c.

Sir:

You have been informed that when overtures were made in the month of September, last, by Sir Edward Thornton, on behalf of Her Majesty's Government, for a resumption of extradition under the Xth Article of the Treaty of 1842, and for the negotiation of a new and more comprehensive treaty, the resumption of the treaty of 1842, was proposed by Her Majesty's Government only as a temporary measure until a new treaty of extradition should be negotiated: in fact it was proposed to limit the term during which this temporary measure should be operative to one year.

After various conferences the matter was finally formally presented by Sir Edward in two notes of October 27, a copy of one of which I enclosed you in my No. 49, of October 31st. The other of which I now enclose a copy, informed me that he had received instructions from the Earl of Derby to state that Her Majesty's Government desired the negotiation and conclusion of a new extradition treaty, and with that object had authorized him to submit to me certain proposals on its part and to confer with me with a view to their acceptance, assuring me of the desire of Her Majesty's Government to conclude such a treaty with as little delay as possible.

In a conversation with me on the 27th of October, and before the reception by me of his note of that date, when speaking of a new treaty, he referred to a remark of mine of 2d September last that when negotiations for a new arrangement should be undertaken we had better not attempt to negotiate on the basis of former abortive efforts, and said that his government had sent to him a proposed draft of a new treaty, which might possibly be of service when negotiations should be opened, and enquired whether I would receive a copy, to which I replied that I would receive it informally, not as the basis of any new negotiation, but purely for information, and as an aid to any efforts which might be made in the future toward the celebration of a new Treaty. On the following day he handed me a copy of the proposed draft which proved to be the draft on

which we had failed in 1874, with amendments to several of the Articles.

No formal conference took place regarding this proposed draft, nor regarding a new treaty, as I had all the time maintained the position that this government would not enter upon the negotiation of a new treaty, while the old treaty remained in the state of suspense in which it had been placed by the refusal of Great Britain to execute its terms, but not infrequent informal conversations took place with reference to provisions which it was thought might be acceptable to both governments. Pending these informal conversations, being impressed with the sincerity of the desire of Her Majesty's government to reëstablish the efficacy of the treaty of 1842, and of its intentions to surrender Winslow, and the other fugitives who had been demanded last spring but whose surrender was then refused I caused to be prepared a draft of a treaty in which I endeavored to meet the wishes of Her Majesty's government, without conceding the principle for which we had contended in the late correspondence with regard to Winslow and others, and caused it to be printed.

After the surrender of Brent and when on 23rd of December, he had been placed on board the "Parthia" and had sailed in charge of the agent of this government, the President regarded this act on the part of Her Majesty's government, without the demand of any conditions or stipulations, as had been previously asked, as the removal of the obstacles which had arrested the execution of the extradition treaty between the two governments, and in a note to Sir Edward Thornton of the same date (23d December) upon receiving your telegram informing me that Brent had sailed, I informed him that the President was then ready to respond to any requisitions which might be made on the part of Her Majesty's government under the Xth Article of the treaty of 1842, and would thereafter make similar requisitions upon Her Majesty's government as heretofore under the treaty, and would again regard the treaty as in full force, subject to the right reserved to either party to terminate the same pursuant to the XIth Article.

There being now no longer any reason why the United States might not enter upon the negotiation of the new treaty for which Great Britain had expressed a desire, which was at least equally shared by this government, on the 28th of December, I forwarded to Sir Edward Thornton, in a note of that date, of which a copy accompanies this, a copy of the draft treaty which had been prepared having,

previously, on the 13th of December, informally and confidentially, and with the view to expedite the negotiations, should they be entered upon, given a copy as the draft which would be proposed when the United States felt justified in entering upon the discussion of the new treaty. In this note I stated the readiness on the part of the United States to sign, consider and conclude, a new treaty and wished consideration of the provisions of the draft then submitted.

Copies of this draft were sent to you in instruction No. 95, of the date of February 2d.

Since then frequent conferences have been had with reference thereto, and Sir Edward has informed me that he had forwarded to London a copy of the draft and I have been under the belief that he was expecting early information as to the views of Her Majesty's government upon the question. I have endeavored to impress upon Her Majesty's representative, the importance of reaching a conclusion before the end of the session of Congress, and while the Senate might act upon it.

Up to the present time, however, I have received no reply to my note, nor has any formal notice been taken of this proposal on our part, made in response to the invitation contained in his note of October 27.

I am at a loss to understand precisely what, if in fact there be any explanation of the causes which may have led Her Majesty's government to propose the negotiation of a new treaty, to discuss its details and having obtained a proposal from us, to allow this important subject, in which so much interest had been expressed, to rest unnoticed.

I cannot but feel with the wide difference of opinion which exists in the two countries as to the offences for which under the existing treaty surrendered criminals can be tried, and with the want of power in the federal authorities, in the absence of treaty stipulations limiting and defining the offences for which a surrendered fugitive may be tried, to control prosecutions in the State Courts; that the questions which arose in Winslow's case, may, at any moment, present themselves, and perhaps leave the two countries without any arrangements for extradition. Indeed a case is now pending which may again bring up these questions and possibly may jeopard, if not lead to the termination of the present treaty.

A few days since a request was made for the surrender of one Smith N. Hawes, a fugitive in Canada, charged

with forgery in Kentucky. On the 19th instant, Sir Edward Thornton called on me stating that the fugitive had applied to Lord Dufferin stating that there were also charges against him in Kentucky of embezzlement, as well as of forgery, that he was fearful that if surrendered he would be tried for the embezzlement, and that Lord Dufferin had enquired of him whether an arrangement could be made to insure the fugitive against trial for the latter offence.

It was the Winslow case over again and I reminded him of our position on that question, and to an enquiry whether the government could not communicate with the Governor of Kentucky, I assured him that the idea could not be for a moment entertained.

Should the surrender of this fugitive be refused, or should stipulations be demanded, as was done in the case of Winslow, it is not improbable that such course would be regarded as the violation and abrogation of the treaty. On the other hand should the fugitive be surrendered and should he be tried in Kentucky, on the charge of embezzlement, the position which Her Majesty's government and the intimations which they have given, indicate more than a probability that the notice to terminate the treaty may proceed from that government, under its XIth Article.

Regarding therefore the great uncertainty of permanence of the existing treaty, and the very great importance of a more enlarged and better defined arrangement between the two countries, I have today addressed a note to Sir Edward Thornton on the subject, so that no effort on the part of the United States shall be wanting to place the two countries in proper relations to each other on this important question by the negotiation of a new treaty.

A copy of this note is herewith enclosed.

I am, Sir, Your obedient servant,

HAMILTON FISH.

Enclosures:

Sir Edward Thornton to Mr. Fish—Oct. 27 1876.
Mr. Fish to Sir Edw'd Thornton—Dec 28 "
Same to Same Feby. 23 1877.

Dispatch No. 108, Fish to Pierrepont, dated February 24, 1877

B. A. No. 108. (Confidential) Department of State, Washington, 24 Feby., 1877.

Edwards Pierrepont, Esquire,
&c., &c., &c.

Sir:

By my No. 107, I have addressed you upon the question of the conclusion of a new extradition Treaty between this country and Great Britain, furnishing you with a copy of certain correspondence which has taken place between Sir Edward Thornton and myself.

I was careful, in that instruction, to confine myself to what might fairly be deemed official interviews or official correspondence, as I was unwilling to leave any opportunity for saying hereafter, and during another Administration, that Sir Edward's unofficial interviews have been improperly spread upon the record. At the same time it seems to me that both my successor and your Legation are entitled to be confidentially informed concerning the various steps which have taken place toward a new treaty, to be able to intelligently deal with the subject, and I therefore give you this information in a confidential private instruction.

Upon the 30th August, last, when Sir Edward approached me in New York, on the extradition question, he informed me that he was instructed to propose the negotiation of a new extradition treaty, and as a temporary measure, the resumption of extradition under the treaty of 1842. And upon a continuance of this conversation on September, 2nd, he reported the same thing at length, concerning which I have already informed you.

At that time, Sir Edward in addition to his note proposing resumption under the treaty of 1842 as a temporary measure, showed me a draft note proposing to renew the negotiations suspended in 1874, for a new treaty.

This note made specific reference to the various Articles and to the points wherein we had failed to agree, and distinctly stated, on the part of Her Majesty's Government, that they would apply to Parliament for a new Act to provide that a surrendered fugitive might be tried for offenses other than the one on which extradition had been asked, if the consent of the surrendering Government be obtained on full information given as to the new charges.

I told him, as I often did on other occasions, that we would not treat of a new convention while the old one re-

mained in the condition of suspense—neither operative nor abrogated in which it had been placed by the refusal of Great Britain to execute its terms. I did not doubt, however, that before long Great Britain would be compelled to recede from her position, and that we should be in position, consistent with our dignity and self respect, to enter upon the discussion of the terms of a new treaty. I therefore, informally conversed with him on the subject in order to reduce points of difference, and to appreciate on each side, the views and position of the other, so that when the time came that the United States should feel disposed to enter upon formal negotiations, those negotiations might be brought to an early conclusion.

In this view, therefore, not only at the interview on 2nd of September, but frequently afterward, Sir Edward Thornton and I informally discussed various provisions of a proposed treaty, and when he first mentioned the proposed limitation to the trial of a surrendered fugitive, providing that notice be given to the surrendering State, and its assent be obtained. I objected to it strongly, as useless, troublesome and tending to delay and expense, and I also suggested that it seemed to me unwise to take up the abandoned negotiation of 1874, and to attempt to make it now successful.

After the interview on September 2nd, these two notes, which had been shown to me were withheld, and Sir Edward thereupon asked instructions from his Government, and several earnest, though somewhat informal and confidential interviews and conversations were held between us, during which the form of the British notes were modified from that in which he had received them, in August, until they gradually, through successive changes, were produced in the notes of 27th October.

Upon the 27th October in speaking of the new Extradition treaty he referred to a remark of mine, made on September 2nd, that I thought we had better not attempt to negotiate on the basis of the former abortive negotiations, and said that his Government had sent him a proposed draft of a new treaty, which might possibly be of service in case negotiations were opened, and enquired whether I would receive a copy of it. I told him I would accept it informally, not as the basis of a new negotiation, but as an aid in that direction. He said he would send me a copy in that light.

Upon October 28, the day after Sir Edward had addressed me his formal note, proposing the negotiation of a new treaty, he left with me the draft of a proposed treaty,

entitled, United States Draft, August 1876, with a manuscript containing two alternative propositions relative to the offences for which a surrendered fugitive might be tried, which was intended to be inserted as Article 3, which was blank in the draft. I send you herewith upon a separate sheet, a copy of these alternative proposals. In other respects, and in the other articles, this draft followed the last draft which had been proposed in Great Britain in 1874, incorporating therein certain of the amendments proposed by us, during that negotiation.

On November 13, Sir Edward asked me whether, in view of the election, I thought the necessary two third vote could be obtained in the Senate for the ratification of a new treaty, to which I replied in the affirmative.

Upon the 29th November, I told him that if a new treaty were made, it was very desirable to submit it to the Senate at an early day, as there might be exciting questions arising soon after with reference to the counting of the electoral votes. In the mean time, a draft of which copies have been sent to you, had been prepared as a proposal to be made on the part of this Government, when the time should arrive for entering upon negotiations.

On the 13th December, in a conference with him, I referred to the fact that he had left with me the printed draft of a proposed Treaty, with the understanding that it was informal, and might be disclaimed by either side, and I thought it desirable to try and conclude a new treaty before the recess of the Senate, and, therefore, had prepared some provisions, which when negotiations should be entered upon, I should feel it my duty to urge, and that I would submit them to him in the same manner as he had left his draft with me.

I then read to him the proposed sections 3, 4 and 9, and also proposed to make an alteration in the schedule of crimes, so that the first shall read murder or assault with intent to commit murder, and to make the VIIth Article correspond with the VIIth Article in the proposed British draft, excepting in the omission of the words "of the diplomatic Agent," as, when a demand was made in a Colonial possession, a Consular officer must act.

I then gave him, unofficially, a copy of this proposed draft, which had been prepared here, which I had caused to be printed for our use privately, and which was the same, I afterwards sent to him formally in my note of December 28th. This draft, made as I have above stated, slight alteration in the schedule of crimes in Article I and in Article VII, but proposed new Articles for Articles III and IV,

and somewhat changed Article IX. In other respects it closely if not exactly corresponded to the draft which Sir Edward had unofficially presented me, and to which I have above alluded.

He stated, on this occasion, that he would telegraph to London, the points wherein we differed and while he had some doubt as to the action of his Government, he seemed to feel that our draft was an improvement upon their informal proposition.

On the following day we further discussed the question of the schedule of crimes, and I expressed the desire to endeavor to meet any suggestion of Her Majesty's Government. We also spoke of Article IX, and there seemed to be no great difference between us on this point.

Upon the 28th December, Sir Edward informed me that he had not yet received my formal note of that date, with reference to the negotiation of a new treaty, whereupon I obtained the note and read it to him and he promised to telegraph to his Government upon the question.

Upon the 1st February, I enquired about the proposed treaty, and whether we would shortly be able to negotiate one. He said he was not authorized to speak on the subject, but thought that his Government had reached the conclusion that they could not make a treaty without first altering the Act of Parliament of 1870. I told him I thought we had a right to complain that they had induced us to put the treaty of 1842 again into operation, by calling it a temporary measure to give an opportunity of consummating a more comprehensive treaty, and had preceded their proposition to that end, by the informal presentation of the basis of a new treaty which involved an alteration of the Act of 1870, and that it was a disappointment now that they had obtained the reinvigoration of the old treaty, to find that they had suddenly discovered that they could not do what they professed a willingness to do theretofore, and in this connection, partly as a friendly joke, and partly as a real expression of what, in my opinion, was an event not unlikely to occur, I suggested to him that when Brent, or some other criminal was tried on a charge other than that for which he had been surrendered, it would bring matters to a point.

Upon the 8th February, Sir Edward informed me, in confidence, that his Government was inclined to criticise his action in proposing the new Extradition treaty but stated that he had acted under instructions in the matter. Of

course these were steps taken by the Government, because the draft presented was a new one entitled August, 1876.

I have given you this narrative of various unofficial conversations which have taken place between Sir Edward and myself, from which you will readily perceive, either that Her Majesty's Government have induced the United States to reinvigorate the treaty of 1842 upon the assertion that this was deemed a temporary measure, with the understanding that during the meantime, a new treaty should be negotiated, and the Act of 1870 amended to conform to the treaty, and when the treaty has been so reinvigorated, have found it safer or better to take no action in the direction of a new treaty, or else Her Majesty's Government, has for some reason, of which we are not informed, entirely changed its views with reference to the subject.

I am not advised on these points, but I cannot but think that strong ground of complaint might be alleged against Great Britain for the course which has been adopted on this question, and I am not without fear, that the course so adopted, will before long owing to the trial of some surrendered criminal for some offense other than that for which he was surrendered, or to some new complication growing out of the divergence of views entertained in the two countries, bring Her Majesty's Government precisely into the position which they occupied, at the time the surrender of Winslow was demanded by the United States, and will compel them either to acquiesce in what must now be considered as the fair interpretation of the treaty, or leave the two Governments without arrangements of any nature for extradition.

I am, Sir,

Your obedient servant,

HAMILTON FISH.

Enclosure:

Copy of alternatives herein referred to.

A fugitive criminal surrendered by or to either of the Contracting Parties may be tried for any crime covered by the facts proved at the time when his extradition was demanded.

Or this

A fugitive criminal surrendered by or to either of the Contracting Parties may be tried for any crime included in the list of extradition crimes, enumerated in Article I

of this Treaty other than offences covered by the facts proved at the time when his extradition was granted provided that after it is found to be desirable to try him for such other crime, the consent of the surrendering country is asked and given, and the necessary information furnished by the country which had obtained the surrender of the criminal.

Dispatch No. 115, Fish to Pierrepont, dated March 2, 1877

B. No. 115 Department of State,
Washington, 2 March, 1877.

Edwards Pierrepont, Esquire
&c. &c. &c.

Sir:

I have to acknowledge the receipt of your No. 128, enclosing an extract from the London Times, of the 14th of February, giving the remarks by Lord Derby, upon the evening previous, in response to Lord Granville's question as to the conditions under which Brent was surrendered, and concerning the arrangements made for the resumption of extradition.

From the friendly conversation which took place between the noble Lords, it is not unlikely that Lord Granville was quite ready for a very satisfactory explanation, and one suited to ~~the~~ very willing listeners, and to those not likely to make any searching inquiries.

As the overtures made by Great Britain for a reinvigoration of the treaty, and the total change in her position, conceded all that we had demanded—perhaps we may not be required to complain of an explanation which was submitted by Lord Derby to the House of Lords.

If all parties in Great Britain desire to forget the questions which arose, in this manner we may not be called on to complain.

The explanation given, however, as to the causes which gave rise to the difficulty and the causes of resumption, and the manner under which Extradition was resumed under the treaty, are so inaccurate that if any comment were indulged in with reference to His Lordship's remarks, I fear that our views upon these points would be more divergent than as to the construction of the Treaty.

I am, Sir,

Your obedient servant,

HAMILTON FISH.

Note from Thornton to Fish,
dated March 2, 1877

Ack'd per dft. 3d Mch Mr. Payson

(Department of State Received Mar 2 1877)

Washington, March 2, 1877.

The Honourable Hamilton Fish
&c. &c. &c.

Sir,

I had the honour to receive on the 24th instant your note of the 23rd instant relative to the steps which had been taken respectively by the Governments of Her Majesty and of the United States with a view to the temporary revival of the Xth Article of the Treaty of 1842, and the negotiation of a new Treaty on Extradition.

In consequence of the wish which you expressed in that note to be informed, if possible, within the few days which remain of the present session of the Senate, of the views of Her Majesty's Government with regard to the negotiation of a new and more comprehensive arrangement, I addressed an enquiry by Telegraph on the 24th Instant to the Earl of Derby in order that I might obtain from His Lordship the necessary instruction.

On the afternoon of yesterday I received a Telegram from His Lordship in which he instructs me to inform you that I am authorized at once to sign a Treaty with you which is in conformity with the British Extradition Act of 1870, and that Her Majesty's Government would be glad to offer to that of the United States the choice of any of the Extradition Treaties which have been concluded between Great Britain and any other country since the date of the abovementioned Act.

With regard however to any Treaty which would contain provisions not in accordance with that Act, Her Majesty's Government is of opinion that the sanction of the British Parliament should be obtained.

I have the honour to be with the highest consideration,

Sir,

Your obedient Servant,

Edw'd Thornton.

Note, Fish to Thornton, dated March 3, 1877

A.

Department of State,
Washington, 3rd March, 1877.

The R. H. Sir Edward Thornton, K. C. B.,
&c., &c., &c.

Sir:

I have the honor to acknowledge the receipt of your note of 2d instant, in which you state that you are instructed by the Earl of Derby to inform me that you are authorized, at once, to sign a treaty with me which is in conformity with the British Extradition Act of 1870, and that Her Majesty's Government would be glad to offer to that of the United States the choice of any of the Extradition treaties which have been concluded between Great Britain and any other country, since the date of the above mentioned act,—with regard, however, to any treaty which would contain provisions not in accordance with that act. Her Majesty's Government is of opinion that the sanction of the British Parliament should be obtained.

I observe the absence from the note of any expression of intention on the part of Her Majesty's Government to apply for such sanction, or, even of desire that any change be made in that act. The repeated expressions on the part of Her Majesty's Government of a desire to negotiate a new treaty, and the assurance that that government would apply to Parliament for further legislation to sanction a treaty, which might meet the views which this Government should entertain as to the proper scope of an effective treaty, and its own powers and duties with regard to extradition,—and the actual informal presentation by Her Majesty's government of a draft of a proposed treaty containing provisions which it was supposed are not in accordance with the construction which Her Majesty's government was understood, in recent correspondence, to have placed upon the act of Parliament above referred to, lead to disappointment in the announcement that Her Majesty's government at this time contracts its expression of willingness to negotiate a new treaty, and omits the assurance heretofore given that application will be made to Parliament for such modification, if any be necessary, to authorize the negotiation of a competent treaty.

I regret, therefore, to be compelled to regard the reply which you have been instructed to give, as indicating a change in the position of Her Majesty's government with

regard to the subject, and at variance with the assurances and desires heretofore expressed.

I have the honor to be with the highest consideration,

Sir,

Your obedient servant,

HAMILTON FISH.

Note from Thornton to Fish,
dated March 5, 1877

(Department of State Received Mar 6 1877)

Mr. Payson
Washington
March 5, 1877

The Honourable
Hamilton Fish

Sir,

I have the honour to acknowledge the receipt of your Note of the 3rd instant relative to the conclusion of a new Treaty on extradition between Great Britain and the United States. At the end of that Note you express your regret that you are compelled to regard the reply which I have been instructed to give as indicating a change in the position of Her Majesty's Government with regard to the subject, and at variance with the assurances and desires heretofore expressed.

With reference to this opinion I must premise that in consequence of the wish expressed by you in your Note to me of the 23rd ultimo, to be informed if possible, within the few days which remained of the recent session of the Senate, of the views of Her Majesty's Government with regard to the conclusion of a new and more comprehensive arrangement for the extradition of criminals, and desiring to convey your request to the Earl of Derby as soon as possible, I communicated it to His Lordship by Telegraph, naturally abstaining however from transmitting the whole of your Note by that means.

Lord Derby's answer, of the tenour of which I had the honour to inform you in my note of the 2nd instant, appears to me to have been inspired by a desire to meet your wishes as far as possible and to point out what could be done immediately if it were deemed expedient by the Government of the United States, and what could not be done by Her Majesty's Government without the sanction of Parliament.

But I cannot see that because Lord Derby has authorized me by Telegraph at once to sign a Treaty which should be in accordance with the provisions of the British Extradition Act of 1870, offering to the Government of the United States the choice of any of the Treaties which have been concluded between Great Britain and any other country since the date of that Act, Her Majesty's Government has therefore desisted from the offer which it had previously made to endeavour to induce Parliament to amend the Act in question so as to meet the views as far as possible of the Government of the United States. I can hardly consider that the opinion which you have expressed at the end of your Note of the 3rd instant, is sustained by the mere fact that in the necessary brevity of a Telegraphic Message, Lord Derby has not repeated the offer which had been previously made by Her Majesty's Government.

I have the honour to be, with the highest consideration,

Sir,

Your obedient Servant,

EDW'D THORNTON.

Draft of treaty headed "British Legation March 14, 1877"

BRITISH LEGATION MARCH 14, 1877

Draft of a Treaty of Extradition between the United States of America and Great Britain.

THE United States of America and Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, having judged it expedient, with a view to the better administration of justice, and to the prevention of crime within their respective territories and jurisdictions, that persons charged with or convicted of the crimes hereinafter enumerated, and being fugitives from justice, should, under certain circumstances, be reciprocally delivered up; They have named as their Plenipotentiaries to conclude a Treaty for this purpose, that is to say:

The President of the United States of America, Hamilton Fish, Esquire, Secretary of State of the United States; and

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, the Right Honourable Sir Ed-

ward Thornton, a Member of Her Majesty's Privy Council, Knight Commander of the Most Honourable Order of the Bath, Her Envoy Extraordinary and Minister Plenipotentiary to the United States of America:

Who, after having communicated to each other their respective full powers, found in good and due form, have agreed upon and concluded the following Articles:—

ARTICLE I.

It is agreed that The United States and Her Britannic Majesty shall, upon mutual requisition by them or their Ministers, officers, or authorities respectively made, deliver up to justice all persons who, being charged with or convicted of any of the crimes enumerated in the schedule annexed to this Article, committed within the jurisdiction of either, such persons being actually within such jurisdiction when the crime was committed, shall seek an asylum or shall be found within the jurisdiction of the other. Provided that this shall only be done upon such evidence of criminality as, according to the laws of the place where the fugitive or person so charged shall be found, would justify his apprehension and commitment for trial if the crime or offence had there been committed, and the respective Judges and other Magistrates of the two Governments shall have power, jurisdiction, and authority, upon complaint made under oath, to issue a warrant for the apprehension of the fugitive or person so charged, that he may be brought before such Judges or other Magistrates respectively, to the end that the evidence of criminality may be heard and considered, and if on such hearing the evidence be deemed sufficient to sustain the charge, it shall be the duty of the examining Judge or Magistrate to certify the same to the proper executive authority, that a warrant may issue for the surrender of such fugitive.

The expense of such apprehension and delivery shall be borne and defrayed by the party who makes the requisition and receives the fugitive.

SCHEDULE.

1. Murder, or assault with intent to commit murder.
2. Manslaughter.
3. Counterfeiting, or altering money, or uttering counterfeit or altered money.
4. Forgery, counterfeiting, or altering or uttering what is forged, or counterfeited, or altered.

5. Embezzlement or larceny. The former of the two crimes signifies embezzlement of public moneys, committed within the jurisdiction of either party by public officers or depositaries; or embezzlement by any person or persons, hired or salaried, to the detriment of their employers, when the crime is subject to punishment by the laws of the place where it was committed.

6. Crimes by bankrupts against bankruptcy laws.

7. Fraud by a bailee, banker, agent, factor, trustee, or director, or member or officer of any company, and which fraud is made criminal by any law for the time being in force.

8. Perjury, or subornation of perjury.

9. Rape.

10. Abduction.

11. Child-stealing.

12. Kidnapping.

13. Burglary, or housebreaking.

14. Arson.

15. Robbery.

16. Threats by letter or otherwise with intent to extort.

17. Piracy, by law of nations committed on board of or against a vessel belonging to the nation asking extradition.

18. Criminal sinking or destroying such a vessel at sea, or attempting or conspiring to do so.

19. Assaults on board such ship on the high seas, with intent to destroy life.

20. Revolt, or conspiracy to revolt, by two or more persons on board such a ship on the high seas against the authority of the master.

ARTICLE II.

If the fugitive criminal who has been committed to prison be not surrendered and conveyed away within two months after such committal (or within two months after the decision of the Court, upon the return to a writ of habeas corpus) he shall be discharged from custody, unless sufficient cause be shown to the contrary.

ARTICLE III.

No person surrendered by or to either of the Contracting Parties shall be triable or tried for any crime or offence committed prior to his extradition, other than for one of the offences enumerated in Article One, until he shall have

had an opportunity of returning to the Country from which he was surrendered.

ARTICLE IV.

The provisions of this treaty shall not apply to any crime or offence of a political character, nor to acts connected with such crimes or offences—and no person surrendered by or to either of the contracting parties in virtue hereof shall be tried or punished for any political crime or offence nor for any act connected therewith, committed previously to his extradition.

ARTICLE V.

The surrender shall not take place if, since the commission of the acts charged, the accusation, or the conviction, exemption from prosecution or punishment has accrued by lapse of time, or other lawful cause, according to the laws of the place where the crime was committed.

ARTICLE VI.

The provisions of the Treaty shall not apply to any crime or offence committed prior to the date when it shall be brought into operation, other than those enumerated in Article X of the Treaty between the United States and Great Britain, concluded at Washington on the 9th of August, 1842.

ARTICLE VII.

If the individual claimed by one of the two Contracting Parties, in pursuance of the present Treaty, should be also claimed by one or several other Powers, pursuant to Treaty stipulations, on account of other crimes committed within their jurisdiction, his surrender shall, in preference, be granted in compliance with that demand which is earliest in date; unless any other arrangement should be made between the Governments which have claimed him, either on account of the gravity of the crimes committed, or for any other reasons.

ARTICLE VIII.

If the individual claimed should be under prosecution, out on bail, or in custody, for a crime or offence committed in the country where he may have taken refuge, or if a warrant for his arrest upon a criminal charge has been obtained in good faith, and with intent to proceed there-

upon without delay, his surrender may be deferred until he shall have been set at liberty in due course of law.

In case he should be proceeded against or detained in such country, on account of obligations contracted with persons, whether individual or corporate, his surrender shall nevertheless take place, the complainant retaining his right to prosecute his claims before the competent authority.

ARTICLE IX.

Everything found in the possession of the fugitive criminal at the time of his arrest, which may be material as evidence in making proof of the crime, shall, so far as practicable, be delivered up with the person of the criminal at the time of the surrender.

Nevertheless the rights of third parties with regard to the articles aforesaid shall be duly respected.

ARTICLE X.

The stipulations of the present Treaty shall be applicable to all Foreign or Colonial possessions of either of the two High Contracting Parties.

The requisition for the surrender of a fugitive criminal who has taken refuge in a Foreign or Colonial possession of either Party, shall be made to the Governor or Chief Authority of such possession by a Consular Officer of the other, within the jurisdiction of such Governor or Chief Authority; or, if the fugitive has escaped from a Foreign or Colonial possession of the Party on whose behalf the requisition is made, by the Governor or Chief Authority of such possession. But no such requisition shall be made by a Consular Officer who is not authorized by his Government to make such requisitions.

Such requisitions may be disposed of, subject always, as nearly as may be, to the provisions of this Treaty, by the respective Governors or Chief Authorities.

The Contracting Parties shall, however, be at liberty respectively to make special arrangements in all their respective Colonies and Foreign possessions for the surrender of fugitive criminals who may take refuge within such Colony or possessions, on the basis, as nearly as may be, of the provisions of the present Treaty.

ARTICLE XI.

The present Treaty shall come into operation two months after the exchange of the Ratifications. After the Treaty shall so have been brought into operation, Article

X of the Treaty concluded between the High Contracting Parties on the 9th of August, 1842, shall be considered as cancelled, except as to any proceeding that may have already been taken or commenced in virtue thereof.

Either Party may at any time terminate this Treaty on giving to the other six months' notice of its intention.

ARTICLE XII.

The present Treaty shall be ratified, and the Ratification shall be exchanged at Washington as soon as may be thereafter.

In witness whereof, the respective Plenipotentiaries have signed the same, and have affixed thereto the seals of their arms.

Done at , the day of in the year of Our Lord one thousand eight hundred and seventy-

Note, Evarts to Thornton, dated April 23, 1877

Department of State,
Washington, April 23, 1877.

The R. H. Sir Edward Thornton, K. C. B.
&c. &c. &c.

My dear Sir Edward:

I enclose proposed Article III. Article IV of Mr. Fish's draft to remain unchanged.

Yours very truly,

WM. M. EVARTS.

ARTICLE III.

A fugitive criminal surrendered by or to either of the contracting parties may be tried for any other of the crimes or offences, committed prior to his extradition, enumerated in Article one, Provided that notice of not less than sixty days shall be given to the Government that shall have made the surrender of the intention to try such fugitive criminal for such enumerated crime or offence, with such specification of such crime or offence, in time, place and circumstance, as shall disclose and identify the alleged crime or offence for which said fugitive criminal is to be tried.

No person surrendered by or to either of the Contracting Parties shall be triable or be tried for any crime or

offence committed prior to his extradition other than the offences enumerated in Article one, until he shall have had an opportunity of returning to the country from which he was surrendered. An interval of sixty days between his being set at liberty in respect of the charge on which his surrender had been made and his arrest upon any other charge shall be sufficient evidence of such opportunity.

Note from Plunkett to Evarts, dated June 18, 1877

(Department of State Jun 19 1877 Received)

File

Mr. Payson
Washington
June 18, 1877

The Honourable William M. Evarts
&c. &c. &c.

Sir,

With reference to Sir Edward Thornton's note to Mr. Fish of the 2nd of last March stating that Her Majesty's Government would be glad to offer to the United States the choice of any of the Extradition Treaties which have been concluded between Great Britain and any other country since the date of the British Extradition Act of 1870, and in compliance with the request that you made verbally to me this morning that I should furnish you with copies of the Treaties referred to by Sir Edward Thornton I have now the honour to forward to you printed copies of the following eleven Treaties:

Extradition Treaty with Germany dated May 14, 1872
Extradition Treaty with Brazil November 13 1872
Extradition Treaty with Italy February 5, 1873
Extradition Treaty with Denmark March 31, 1873
Extradition Treaty with Norway and Sweden June 26, 1873
Extradition Treaty with Austria December 3, 1873
Extradition Treaty with Honduras January 6, 1874
Extradition Treaty with Switzerland March 31, 1874
Extradition Treaty with the Netherlands June 19, 1874
Extradition Treaty with Hayti December 7, 1874
Extradition Treaty with Belgium May 20, 1876

In forwarding to you the above, I beg again to repeat what I have already had the honour of stating to you verbally, viz.: that I have no authority from Her Majesty's

Government to carry on negotiations for the new Extradition Treaty between Great Britain and the United States, and that I can do no more than report to The Earl of Derby the various observations which you have seen fit to make to me on the subject.

I have the honour to be with the highest consideration,
Sir,
Your obedient Servant,
J. W. PLUNKETT.

Note from Plunkett to Evarts, dated July 22, 1877

Private

Recd. July 22
British Legation,
Washington
July 22, 1877

The Honorable W. M. Evarts
&c. &c. &c.

Dear Mr. Evarts

I am very sorry to have to be importunate and to be obliged to break in upon your Sunday's rest; but, I have received Telegraphic Instructions from Lord Derby to urge upon you the great desire of Her Majesty's Government that you would give an immediate and decided answer whether you can conclude a Treaty in the form of any of the Extradition Treaties of which I had the pleasure of sending you copies.

I called at your house today in hopes of finding you at home, and, as I was not so fortunate as to do so, I would beg you kindly to let me know at what hour, tomorrow, I may call on you at the State Department, or at your own house if you prefer it.

With many apologies for thus trusting you, I remain
Very faithfully yours
J. W. PLUNKETT.

Note, Evarts to Plunkett, dated July 23, 1877

Department of State,
Washington, July 23, 1877.

The

Hon'ble Francis R. Plunkett,
&c. &c. &c.

My dear Mr. Plunkett:

I herewith enclose to you a copy of the proposed Article III, which was the subject of our correspondence this morning.

Very truly yours,

WM. M. EVARTS.

Enclosure:

ARTICLE III.

A fugitive criminal, surrendered by or to either of the contracting parties, may be tried for any other of the crimes or offences, committed prior to his extradition enumerated in Article I, Provided that notice of not less than sixty days shall be given to the Government that shall have made the surrender, of the intention to try such fugitive criminal for such enumerated crime or offence, with such specification of such crime or offence, in time, place and circumstance, as shall disclose and identify the alleged crime or offence for which said fugitive criminal is to be tried.

If after receiving such notice, and within the stipulated sixty days, the Government so notified shall advise the Government giving such notice that it will consider the proposed trial a violation of Article IV such trial shall not take place, until the express assent of the Government of the United States, through the Secretary of State, shall have been given to such trial, if the same is to take place within the United States, or the express assent of Her Majesty's Government through

shall have been given to such trial, if the same is to take place within Her Majesty's territory or jurisdiction. And the absence of this assent, in the one case and the other, shall be a bar and defense to such prosecution, if interposed in behalf of the accused at any time before final judgment in his case.

No person surrendered by or to either of the Contracting Parties shall be triable or be tried for any crime or offence committed prior to his extradition, other than the offences enumerated in Article I, until he shall have had

an opportunity of returning to the country from which he was surrendered. An interval of sixty days between his being set at liberty in respect of the charge on which his surrender had been made and his arrest upon any other charge shall be sufficient evidence of such opportunity.

Dispatch No. 205, Pierrepont to Evarts, dated July 27, 1877

No. 205.

Legation of the United States,
London, July 27th, 1877.

The Hon'ble William M. Evarts,
Secretary of State,
&c &c &c

Sir,

Last night I met at dinner three members of the Ministry. Each spoke of Extradition, and all said that it was quite too late in the season to attempt any treaty which would require legislation from Parliament. The tenth of August was the day fixed for adjournment, but it now looks unlikely that so early a day will be found convenient. The Lord Chancellor or Mr. Cross, I am not quite sure which, remarked that Her Majesty's Government had offered to our Government the choice of any treaty made with other Powers, but that it was now past the time to consider any treaty which required a new act of Parliament to put the convention in force.

I have the honor to be

with great respect

Your obedient servant,

EDWARDS PIERREPONT.

Note from Plunkett to Evarts, dated August 2, 1877

(Department of State Aug 2 1877 Received)

Washington
August 2, 1877

The Honourable
William M. Evarts
&c &c &c

Sir,

With reference to the conversations which I had the honour of having with you in the month of June, on the

subject of the proposed new Extradition Treaty, I have now to inform you that I have received a Despatch from the Earl of Derby directing me to state to you that Her Majesty's Government are precluded by the Act of 1870 from entering into any arrangement inconsistent with that Act, and that it is therefore necessary, if the United States Government continue to insist on a special form of Treaty, for Her Majesty's Government to consider whether Parliament will be disposed to amend the Act, and if so, to what extent.

I am also directed to suggest that, as Sir Edward Thornton is now in London, the matter might possibly be expedited if the negotiations were to be carried on there, unless the United States Government desire to retain the discussion of the question at Washington.

I have the honour to be with the highest consideration,

Sir,

Your obedient Servant,

F. R. PLUNKETT.

Note from Seward to Plunkett, dated August 7, 1877

G. Department of State,
Washington, 7 August, 1877.

The Hon'ble Francis R. Plunkett,
&c. &c. &c.

My dear Mr. Plunkett:

I have received your communication of the 2nd instant, in which you state that you have been directed by the Earl Derby, to inform the Secretary of State, that Her Majesty's Government are precluded, by the act of 1870, from entering into any arrangement inconsistent with that act, and that it is, therefore, necessary, if the United States Government continue to insist on a special form of treaty for Her Majesty's Government to consider whether Parliament will be disposed to amend the act, and if so, to what extent. You further state that you are also directed to suggest that as Sir Edward Thornton is now in London the matter might possibly be expedited if the negotiations were to be carried on there.

In reply I have to inform you that your suggestion will receive careful consideration.

I am, my dear Mr. Plunkett,

Very truly yours,

F. W. SEWARD.

Note from Plunkett to Seward, dated August 10, 1877

Mr. Payson
Washington
August 10, 1877.

The Honourable
F. W. Seward.
&c &c &c.

Sir,

With reference to the conversation which I had with Mr. Evarts on the 23rd Ultimo, and to the proposal which he then submitted to me, I have the honour to inform you, in compliance with Instructions received from Her Majesty's Principal Secretary of State for Foreign Affairs, that Her Majesty's Government regret the unwillingness of Mr. Evarts to accept any of the Extradition Treaties which Great Britain has concluded under the Act of 1870, and thus enable a Treaty to be concluded at once.

I am directed at the same time to state that Her Majesty's Government will consider Mr. Evarts' last proposal; but it must be borne in mind that Her Majesty's Government are precluded by the Act of 1870 from entering into any engagement inconsistent with that Act, and that any departure from it would consequently require fresh preliminary Legislation in England.

I have the honour to be, with the highest consideration,

Sir,

Your obedient servant,

F. W. PLUNKETT.

Dispatch No. 221, Pierrepont to Evarts, dated August 22, 1877

No. 221.

Legation of the United States,
London, August 22nd, 1877.

The Hon'ble. William M. Evarts
Secretary of State
&c &c &c

Sir,

I have the honor to state that I find in this day's *Morning Post* the text of a Commission lately appointed by Her Majesty for inquiring into the laws relating to the Extradition of Criminals and that I enclose a clipping of the same. Mr. Cross lately told me that there would be much embarrassment in making a Treaty of Extradition which required special action of Parliament upon a convention with any particular state. I think that this Commission is for the purpose of producing a change in the Act of 1870,—and also for the purpose of considering the whole subject of Extradition. Until this Commission reports I do not think that any new Treaty touching this subject is likely to be made. I shall watch the progress of this Commission and keep you advised.

I have the honor to be,
with great respect,
your obedient servant,

EDWARDS PIERREPONT.

Enclosure.

Clipping from the London *Morning Post,* August 22nd, 1877.

No. 221. 1

THE MORNING POST, WEDNESDAY, AUGUST 22, 1877.

THE EXTRADITION OF CRIMINALS.

(From the *London Gazette.*)

WHITEHALL, August 20.

The Queen has been pleased to issue a Commission under Her Majesty's royal sign manual, to the effect following: —

Victoria R.—Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland, Queen De-

fender of the Faith—To our right trusty and well-beloved Councillor Sir Alexander James Edmund Cockburn, Bart., Knight Grand Cross of our most Honourable Order of the Bath, Lord Chief Justice of England; our right trusty and well-beloved Councillor Roundell, Baron Selborne; our right trusty and well-beloved Councillor Colin, Baron Blackburn, one of our Lords of Appeal in Ordinary; our right trusty and well-beloved Councillor Russell Gurney, Recorder of our City of London; our right trusty and well-beloved Councillor Sir Richard Baggallay, Knight, one of our ordinary judges of our Court of Appeal; our right trusty and well-beloved Councillor Sir William Baliol Brett, Knight, one of our ordinary judges of our Court of Appeal; our trusty and well-beloved Sir John Rose, Bart., Knight Commander of our most distinguished order of Saint Michael and Saint George; our trusty and well-beloved Sir James Fitzjames Stephens, Knight Commander of our most exalted Order of the Star of India, one of our counsel learned in the law; our trusty and well-beloved Sir William George Granville Vernon Harcourt, Knight, one of our counsel learned in the law; and our trusty and well-beloved William Torrens M'Cullagh Torrens, Esq., Bachelor of Laws, greeting:

Whereas we have deemed it expedient that a Commission should forthwith issue to inquire into and consider the working and effect of the law and treaties relating to the extradition of persons accused of crime.

Now, know ye that we, reposing great trust and confidence in your knowledge and ability, have authorised and appointed, and do, by these presents, authorise and appoint you, the said Sir Alexander James Edmund Cockburn, Roundell, Baron Selborne, Colin, Baron Blackburn, Russell Gurney, Sir Richard Baggallay, Sir William Baliol Brett, Sir John Rose, Sir James Fitzjames Stephen, Sir William George Granville Vernon Harcourt, and William Torrens M'Cullagh Torrens, to be our Commissioners for the purposes aforesaid.

And for the better effecting the purposes of this our Commission, we do, by these presents, give and grant unto you, or any three or more of you, full power and authority to call before you such persons as you shall judge likely to afford you any information upon the subject of this our Commission, and also to call for, have access to, and examine all such books, documents, registers, and records as may afford the fullest information on the subject, and to inquire of and concerning the premises by all other lawful ways and means whatsoever.

And we do by these presents will and ordain that this our Commission shall continue in full force and virtue, and that you, our said Commissioners, or any three or more of you, may from time to time proceed in the execution thereof, and of every matter and thing therein contained, although the same be not continued from time to time by adjournment.

And we further ordain that you, or any five or more of you, may have liberty to report your proceedings under this Commission from time to time if you shall judge it expedient so to do.

And our further will and pleasure is that you do, with as little delay as possible, report to us, under your hands and seals, or under the hands and seals of any five or more of you, your opinion upon the several points herein submitted for your consideration.

And for your assistance in the execution of this our Commission, we have made choice of our trusty and well-beloved George Edward March, Esq., to be secretary to this our Commission, and to attend you, whose services and assistance we require to use from time to time as occasion may require.

Given at our Court at St. James's, the 18th day of August, 1877, in the 41st year of our reign.

By her Majesty's command.

RICHARD ASSHETON CROSS.

Note from Plunkett to Evarts, dated September 12, 1877

Washington.
September 12, 1877.

The Honorable
W. M. Evarts
&c. &c. &c.

Sir,

With reference to the conversation which I had the honour of having with you on the 23rd of last July, when you were so good as to propose, for the consideration of Her Majesty's Government, a further Amendment of Article III in the Treaty of Extradition which it is sought to conclude between Great Britain and the United States, I have to inform you, in compliance with Instructions received this day from the Earl of Derby, that Her Majesty's Government have appointed a Royal Commission to consider

the whole subject of Extradition, whose deliberations will, they trust, afford a solution of the Legal difficulties now attending the negotiation of a New Treaty.

I have been further instructed to express the hope of Her Majesty's Government that you will see in this a proof of their earnest desire to bring these long pending negotiations to a satisfactory conclusion.

I have the honour to be, with the highest Consideration, Sir,

Your obedient servant,

F. R. PLUNKETT.

Note, Seward to Plunkett, dated September 15, 1877

B.Y. Department of State,
Washington, 15 Sept'r 1877.

The
Hon'ble Francis R. Plunkett.
&c. &c. &c.

Sir:

I have the honor to acknowledge the receipt of your note of the 12th instant stating that Her Majesty's Government have appointed a Royal Commission to consider the whole subject of extradition with a view to the solution of the legal impediments now attending the negotiation of a new treaty, and expressing the hope that it will be regarded as a proof of their earnest desire to bring the negotiations which have been pending for some time past to a satisfactory conclusion.

This Government receives with gratification the intelligence thus communicated, and trusts that the labors of the Commission may be attended with success in accomplishing a result so desirable for both countries.

I have the honor to be, with the highest consideration, Sir,

Your obedient servant,

F. W. SEWARD,
Acting Secretary.

Dispatch No. 239, Pierrepont to Evarts, dated October 25, 1877

No. 239.

Legation of the United States,
London, October 25th, 1877

The Hon. William M. Evarts,
Secretary of State.
&c. &c. &c.
Washington.

Sir,

After concluding the Trade Mark Treaty yesterday Lord Derby spoke of "Extradition," and remarked as heretofore that nothing could be done by way of negotiation in that matter until the Commission (of which I have heretofore advised you) had reported, which might be done before Parliament should adjourn next year.

I have the honor to be, with great respect,

Your obedient servant,

EDWARDS PIERREPONT.

Dispatch No. 100 of Welsh to Evarts, dated June 22, 1878, enclosing copy of report of Royal Commission on Extradition

No. 100

Legation of the United States
London, June 22nd 1878

The Honorable
William M. Evarts
Secretary of State
&c. &c. &c.
Washington, D. C.

Sir,

I have the honor to enclose a copy which I have asked to have furnished to me at the earliest possible moment, of the Report to the Queen of the Commissioners appointed by Her Majesty to consider the subject of the Laws and Treaties relating to the Extradition of fugitive criminals.

It gives me great pleasure to state, from the very cursory manner in which I have been able as yet to examine this document, that it recommends substantially the views in regard to this important matter which have always been

entertained by the Department of State and by my predecessors at this post.

I have the honor to be with great respect,

Your obedient servant,

JOHN WELSH.

Enclosure

Report of the Royal Commissioners on Extradition.

ROYAL COMMISSION ON EXTRADITION.

REPORT

of the

COMMISSIONERS.

Presented to both Houses of Parliament by Command of Her Majesty.

LONDON:

PRINTED BY GEORGE EDWARD EYRE AND WILLIAM SPOTTISWOODE,

PRINTERS TO THE QUEEN'S MOST EXCELLENT MAJESTY.

FOR HER MAJESTY'S STATIONERY OFFICE.

1878.

[C.—2039.] *Price 2d.*

COMMISSION.

VICTORIA R.

VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the faith, to Our right trusty and well-beloved Councillor Sir Alexander James Edmund Cockburn, Bart., Knight Grand Cross of Our Most Honourable Order of the Bath, Lord Chief Justice of England; Our right trusty and well-beloved Councillor Roundell, Baron Selborne; Our right trusty and well-beloved Councillor Colin, Baron Blackburn, one of Our Lords of Appeal in Ordinary; Our right trusty and well-beloved Councillor Russell Gurney, Recorder of Our city of London; Our right trusty and well-beloved Councillor

Sir Richard Baggallay, Knt., one of Our Ordinary Judges of Our Court of Appeal; Our right trusty and well-beloved Councillor Sir William Baliol Brett, Knt., one of Our Ordinary Judges of Our Court of Appeal; Our trusty and well-beloved Sir John Rose, Bart., Knight Commander of Our Most Distinguished Order of Saint Michael and Saint George; Our trusty and well-beloved Sir James Fitzjames Stephen, Knight Commander of Our Most Exalted Order of the Star of India, one of Our Counsel learned in the Law; Our trusty and well-beloved Sir William George Granville Vernon Harcourt, Knt., one of Our Counsel learned in the Law; and Our trusty and well-beloved William Torrens McCullagh Torrens, Esq., Bachelor of Laws, greeting:

WHEREAS We have deemed it expedient that a Commission should forthwith issue to inquire into and consider the working and effect of the Law and Treaties relating to the Extradition of Persons accused of Crime:

NOW KNOW YE, that We, reposing great trust and confidence in your knowledge and ability, have authorised and appointed, and do by these presents authorise and appoint you, the said Sir Alexander James Edmund Cockburn; Roundell, Baron Selborne; Colin, Baron Blackburn; Russell Gurney; Sir Richard Bagallay; Sir William Baliol Brett; Sir John Rose; Sir James Fitzjames Stephen; Sir William George Granville Vernon Harcourt; and William Torrens McCullagh Torrens, to be Our Commissioners for the purposes aforesaid:

AND for the better effecting the purposes of this Our Commission, We do by these presents give and grant unto you, or any three or more of you, full power and authority to call before you such persons as you shall judge likely to afford you any information upon the subject of this Our Commission, and also to call for, have access to, and examine all such books, documents, registers, and records, as may afford the fullest information on the subject, and to inquire of and concerning the premises by all other lawful ways and means whatsoever:

AND We do by these presents will and ordain that this Our Commission shall continue in full force and virtue, and that you, Our said Commissioners, or any three or more of you, may from time to time proceed in the execution thereof, and of every matter and thing therein contained, although the same be not continued from time to time by adjournment:

And We further ordain that you, or any five or more of you, may have liberty to report your proceedings under this Commission from time to time, if you shall judge it expedient so to do:

And Our further will and pleasure is that you do, with as little delay as possible, report to Us, under your hands and seals, or under the hands and seals of any five or more of you, your opinion upon the several points herein submitted for your consideration;

And for your assistance in the execution of this Our Commission, We have made choice of Our trusty and well-beloved George Edward March, Esq., to be Secretary to this Our Commission, and to attend you, whose services and assistance We require you to use from time to time, as occasion may require.

Given at Our Court at St. James's, the eighteenth day of August 1877, in the Forty-first Year of Our Reign.

By Her Majesty's Command,

(Signed) Richd. Assheton Cross.

ADDITIONAL COMMISSION.

VICTORIA R.

Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the faith, to Our trusty and well-beloved Alfred Henry Thesiger, Esq. (commonly called The Honourable Alfred Henry Thesiger), one of Our Counsel learned in the Law, greeting:

Whereas We did by Warrant under Our Royal Sign Manual, bearing date the eighteenth day of August one thousand eight hundred and seventy-seven, authorise and appoint Our right trusty and well-beloved Councillor Sir Alexander James Edmund Cockburn, Baronet, Knt. Grand Cross of Our Most Honourable Order of the Bath, Lord Chief Justice of England, together with the several Noblemen and Gentlemen therein named, or any three or more of them, to be Our Commissioners to inquire into and consider the working and effect of the Law and Treaties relating to the Extradition of Persons accused of Crime;

Now know ye, that We, reposing great trust and confidence in your zeal, discretion, and ability, have authorised and appointed, and do by these presents authorise and appoint you, the said Alfred Henry Thesiger, to be a Commis-

sioner for the purpose aforesaid, in addition to and together with the Commissioners whom We have already appointed by the above-mentioned Royal Warrant:

Given at Our Court at St. James's, the third day of September 1877, in the Forty-first Year of Our Reign.

By Her Majesty's Command,

(Signed) RICHD. ASSHETON CROSS.

REPORT.

TO THE QUEEN'S MOST EXCELLENT MAJESTY.

By Your Majesty's Commission we are directed to inquire into and consider the working and effect of the Law and Treaties relating to the Extradition of Persons accused of Crime. Having inquired into and considered the subject so referred to us, we humbly submit to Your Majesty the following Report:—

I.—The extradition of fugitive criminals is founded on a twofold motive:

1. That it is the common interest of mankind that offences against person and property, offences which militate against the general well-being of society, should be repressed by punishment, as the means of deterring others from committing, as well as of deterring the criminal himself from repeating the offence, as also of disabling the offender, either permanently or temporarily, from further crime.

2. That it is to the interest of the State into whose territory the criminal has come that he shall not remain at large therein, inasmuch as from his past conduct it may reasonably be anticipated that, if opportunity offers, he will again be guilty of crime. No State can desire that its territory should become a place of refuge for the malefactors of other countries. It is obviously its interest to get rid of them.

On the first of these grounds we may reasonably claim from all civilised nations that they shall unite with us in a system which is for the common benefit of all; in other words that they shall concede to us reciprocity in the matter of extradition. But, looking to the second and narrower ground, it seems to us that, even if any State should fail to concede full reciprocity, there is no principle which should make this country unwilling to surrender, and so to

get rid of, the fugitive subjects of other States who have been guilty of crime, and whose surrender is asked for.

We would therefore suggest that extradition treaties with other States, which appear to be practically of use only for the purpose of insuring reciprocity, should no longer be held to be indispensable, and that, while the power in the Crown of entering into extradition treaties with other nations, as now existing by statute, should still be retained, statutory power should be given to the proper authorities to deliver up fugitive criminals whose surrender is asked for irrespectively of the existence of any treaty between this country and the State against whose law the offence has been committed. It is as much to our advantage that such criminals should be punished, and that we should get rid of them, as it is to that of the foreign State that they should be brought within the reach of its law.

Inasmuch, however, as treaties may sometimes be necessary (by the laws or constitution of foreign States), to enable effect to be given to conditions on which the Government of this country may properly insist, and as it might in other cases prove an obstacle to negotiations for treaties or extradition arrangements, into which the Government of this country might think it desirable to enter, if this general statutory power were made applicable to all other countries, without the exercise of any option or discretion by the Crown, it may be expedient to provide that the Act shall extend only to those foreign States to which it may from time to time by Order in Council be declared to apply. It may be assumed that such Order in Council would be made, whenever there was a treaty or other binding arrangement with a foreign State; and also whenever the British Government was satisfied that provision was sufficiently made by the law of a foreign State for all the objects on which it might be deemed the duty or the policy of this country to insist.

II. With reference to both the principles to which we have adverted, it is obviously immaterial whether the fugitive criminal is a subject of the State demanding his surrender, or a subject of the country from which it is claimed. The matter is not, however, altogether free from difficulty, and in most of the existing treaties a stipulation is contained that a fugitive criminal, if a subject of the State in which he is found, shall not be surrendered in respect of a crime committed in the other State.

In favour of such a provision it is said that a man should not be withdrawn from his natural judges; that the

State owes to its subjects the protection of its laws, and that it fails in this duty if it hands over any of them to a foreign jurisdiction, and thus deprives them of the guarantees afforded by the law of their own country; that it is impossible to place entire confidence in the justice of a foreign State, especially with regard to the subjects of another country; and that it is a serious disadvantage to a man to be tried in a foreign language, and where he is separated from his friends and his resources, and from those who could bear witness to his previous life and character. It is, therefore, contended that there should be power to try in his own country a person charged with having committed a crime in another; and that he should be tried there, instead of being surrendered to the foreign State for trial.

To this it may be answered, first, that if every criminal offence, committed by a British subject within any foreign jurisdiction, is to be triable and punishable here, as if it had been committed in England, this would require a most extensive change in our whole system of criminal law, which has hitherto admitted that principle in a very few cases only, depending upon special reasons, and has never recognized the duty, or accepted the responsibility of exercising a general control for purposes of police or punishment, over the actions of British subjects in foreign countries. Furthermore, if this argument be good for anything, every man charged with an offence in a country of which he is not a subject should, by a common arrangement between the different Governments, be sent home to be tried, instead of being tried where the offence was committed; and this, though the laws of the two countries might be essentially different in respect of the quality and degree of the crime; and it should therefore be made competent to a person so charged to claim to be sent home for the purpose of trial:—a proposition too extravagant to be entertained. The offence is an offence against the law of the country in which it is alleged to have been committed. A person commorant in a foreign country owes obedience to its law in return for the protection which it affords him, as much as if he were one of its proper subjects. Why, because he has escaped beyond the jurisdiction of that law, should an offender, whose surrender is asked for, be in a different position from that in which he would have been in the country from which he has escaped? Extradition, as a system, is based on the supposition that in the great majority of instances the persons whose surrender is claimed have, in fact, violated the law of the country

demanding the surrender. The instances in which the surrender of an innocent person may be demanded will be exceedingly rare. With the safeguards, which we shall advert to further on, the possibility of an innocent man being unjustly dealt with will be remote in the extreme.

As regards the suggestion that confidence cannot be placed in the justice of foreign tribunals, it is obvious that when we are inviting other nations to unite with us in a system of extradition, any restriction which implies a doubt of the competency or justice of their tribunals, involves a striking inconsistency. Extradition is based on mutual confidence in the administration of justice by the courts of both nations. It proceeds on the assumption that impartial justice will be done to the party surrendered. We should be unwilling to surrender even a foreigner on any other assumption. It would be an affront to any nation to assume that when a foreigner is charged with an offence against its law its tribunals would not do justice to such foreigner as equally and impartially as would be done in the case of one of its own subjects. We know that in our own country a foreigner charged with an offence receives the same measure of justice as a natural-born subject. When the surrender of one of our subjects is asked for, we are not entitled to assume that he will not be dealt with fairly when surrendered. The alternative being, as should not be forgotten, that a criminal may otherwise escape with impunity, we must assume in all confidence that one of our subjects will find the same impartiality at the hands of a foreign tribunal as a foreigner would find in one of ours, and must act on that assumption in the belief that our expectation will not be disappointed.

As regards the matter of convenience there can be no question as to which is the better system. It is the law of the foreign country which is alleged to have been broken. It is by that law that the fact, as well as the degree, of criminality, and the measure of punishment should be determined. It is by those who have to administer that law alone that these questions can be properly decided.

Moreover, the witnesses are in the foreign country, and can only be brought to that of the accused at greatly increased expense and inconvenience. It is true that their evidence may be taken where they are, and transmitted in a written form. But this is by no means a satisfactory mode of proceeding in the administration of criminal justice; besides which such a mode of proceeding would obviously be attended with serious disadvantage to the accused, inasmuch as the evidence will have been taken behind

his back, without any opportunity for cross-examination, or inquiry as to the character or credibility of the witnesses; all which may well be deemed to counterbalance any disadvantage which may arise from his being tried out of his own country.

On the whole we are of opinion that the stipulation in question is unnecessary and inexpedient, and we recommend that it should be omitted in future treaties; and that endeavours should be made to have the existing treaties modified in this respect.

III.—As to the offences which should be the subject of extradition.

Extradition should embrace all those offences which it is the common interest of all nations to suppress; that is to say, offences against person and property, including in the latter category cases of fraud the purpose of which is to obtain property or money, offences against the bankrupt laws, forgery, and offences relating to coinage. To these it should be confined, to the exclusion of offences of a political or local character.

It is true that it is to the interest of every nation that by the submission of its subjects to the constituted government internal peace and order shall be maintained. But one nation can scarcely be said to have such an interest in the particular form of government, or in the particular ruling dynasty, of another, as that it should be called upon to make common cause with it against political offenders. And however odious the character of the rebel who disturbs the peace of his own country and gives rise to bloodshed and disorder from interested motives, or reckless disregard of the miseries attendant on civil discord, yet both from history and our own experience we know that there are exceptional instances in which resistance to usurpation or tyranny may be inspired by the noblest motives, and in which, though unsuccessful, it may escape condemnation and even command sympathy. It must always be difficult for a foreign nation, when political dissensions occur in another, to judge between the contending parties. Nay, such foreign nation itself may be divided in its views as to the merits or demerits of the particular cause. Influenced it may be by such considerations, the general sentiment of mankind is against the surrender of the political exile to death or other grievous punishment. To have lost his country for which he has been risking life is no small loss to such a man, no light punishment for what he may have done, and he may be suffered to rest in peace in his place

of refuge. The principle hitherto adopted in the matter of extradition of excluding offences of a political character should therefore be maintained.

But it becomes a very different thing when in furtherance of some political, or pretended political purpose, some foul crime, such as assassination or incendiarism, is committed. Thus, attempts by conspirators to assassinate a reigning sovereign,—regardless, perhaps, that in doing so other lives may be sacrificed; or the setting fire to a prison, at the risk of burning all those within it, or the murder of the police, for the purpose of rescuing prisoners in custody for political offences, are crimes in respect of which—though the motive was a political one—we cannot think that any immunity should be afforded. Civil war and insurrection take place openly, in the face of day, and may, or may not, be justified or excused by circumstances; but assassination or other forms of revolting crime lose none of their atrocity from their connexion with political motive.

Generally speaking, we would therefore decline to recognise the suggestion of a political motive as a ground on which a magistrate or judge should refuse a demand for the surrender of a person accused of what (in the absence of such motive) would be an ordinary crime, unless the act, to which a political character was sought to be ascribed, occurred during a time of civil war or open insurrection. Cases, however, may occur in which it would be undesirable to surrender a person accused of a crime instigated by a political motive, even though a magistrate or judge could not pronounce that there existed either civil war or open insurrection, and consequently could not discharge the accused as of right. To meet this possibility, a discretionary power, in favour of the prisoner, should be reserved to the Government to refuse to deliver up a person so accused.

IV.—The exclusion which we have proposed of all offences against local laws and regulations would exclude laws of purely local interest, such as, for instance, laws relating to military or naval service, laws relating to religion, laws relating to the duties of public officers, police regulations, and the like.

V.—Next as to the quality and degree of the crimes which should be the subject of extradition.

We can see no rational ground for any limitation beyond those just referred to. With regard to all others, it may safely be assumed that a foreign Government will not seek to obtain the surrender of an offender for a merely trivial offence. It is equally reasonable to suppose that an

offender will not become a fugitive from his country, unless to escape the punishment due to an offence of a serious character. We would therefore authorise extradition in respect of all offences against either person or property, indictable under our law, without reference to the degree of criminality involved in the particular charge. Confining extradition to offences against person and property, we see no necessity for any distinction between felony and misdemeanor; or for the selection of particular offences as alone of sufficient importance to warrant the surrender of criminals. With a view, however, to certainty and precision, it becomes desirable that the offences, in respect of which extradition may be claimed, should be specified and enumerated.

VI. If the question be asked whether we should refuse to give up a fugitive where the offence in respect of which the surrender is asked for, though an offence against the law of the country asking it, is not an offence against our own, the answer is involved in what has been already said. The crimes in respect of which nations should make common cause against criminals, and refuse them shelter, are those which it is the common interest of all to repress. There are offences against society in respect of person and property, which, in all countries, there will always be found persons disposed to commit, and which can only be kept under by the strong arm of the law. It is these offences which it should be the common purpose of all nations to endeavour to suppress by preventing those who have committed them from escaping from justice. But these offences are known to and dealt with by the law of all civilised nations, though they may be differently dealt with both as to procedure and punishment. If some offence, unknown to the law of other nations—to what may figuratively be called the common law of nations—should be created by the law of a particular people, such an offence would not come within the category of crimes which it is the purpose of extradition to repress.

If it be asked how it is to be ascertained that the offence charged is known and recognized as an offence, the answer is that our own law will afford a sufficient test, being abundantly comprehensive as to offences against person and property.

Besides which, there is another reason for seeing that the charge in respect of which extradition is asked for is an offence under our own law. It is and always must be necessary that a *primâ facie* case shall be made out before

a magistrate in order to support the application for extradition. But the English magistrate cannot be expected to know or interpret the foreign law. It is not desirable that he should be required to do more than to see that the facts proved constitute *primâ facie* an offence which would have been within judicial cognizance if done in this country.

At the same time, while holding that the facts charged against the party whose surrender is asked for should constitute an offence by our law, we by no means intend to say that the offence under the foreign law must be the same in point of denomination, or must fall within the same class or category, or be dealt with according to the same procedure, or be subject to the same punishment as it would be under our own. Any such requirement is calculated to create unnecessary difficulty, and may cause obstruction where extradition ought undoubtedly to take place. It being once ascertained that the facts proved constitute an offence coming within the principle of extradition, the particular form and character which the offence assumes must be left to the foreign law, this being the law which is alleged to have been broken, and by which, beyond all question, if the accused is surrenderd, his guilt or innocence must be determined. The magistrate, therefore, should be authorised to grant extradition upon sufficient *primâ facie* proof before him of facts which constitute an extradition offence, although the description of the offence in the demand, or in the documents produced in support of it, or the facts as therein stated, may not be sufficient to constitute the particular offence to which that description is appropriated by British law: in other words, the magistrate should look to the facts proved before him rather than to the form in which the case may be presented on the documents.

In this respect there can be no distinction between the case of a British subject, if surrendered, and that of a subject of the foreign State. The British subject, while within the foreign State, owes obedience to its law as though he had been one of its subjects, and is as much amenable to that law for a violation of it as a natural-born subject would be.

VII.—A question presents itself whether, if a person be surrendered in respect of one extradition offence, he should, when transferred to the country claiming him, be liable to be tried for another. Political and local offences being excepted, we see no reason why he should not. So far as we are aware, the main ground hitherto put forward for objecting to such a course has been the appre-

hension that a foreign government, having obtained the surrender of a criminal on an ordinary charge, might put him on his trial for a political offence. If the offences just referred to be excluded, there seems to be no other case in which it can be suggested that a foreign government would act disingenuously towards ours if it were to put the person surrendered on his trial in respect of a crime which was not the ground of extradition in the particular instance. If there be another accusation against him in respect of a crime which would properly be the subject of extradition, we see no reason why he should not be called upon to answer it. It may be discovered after the surrender that the party surrendered has committed some other offence deserving of punishment; or proofs, previously wanting, of such other offence may be brought to light. We see no reason why under such circumstances the offender should escape with impunity. If the circumstances under which he was given up were such as to call for his surrender, what possible interest—except in the case of the political offender, or the offender against a merely local law—can we have in what becomes of him afterwards? We should not be warranted in assuming that he will be dealt with in the foreign country otherwise than according to justice and right. Again, what is it that we are supposed to be entitled to claim under such circumstances? It can only be that the party shall be set at large, or restored to this country, when, on the evidence which would be available on the second trial, his surrender might again be claimed from this or any other country bound by an extradition treaty, and if claimed, must be conceded.

The case is no doubt possible, that a person whose surrender was asked for on an ordinary charge might be put on his trial for a political or local offence. But such a case is not likely to occur. In the first place, it being known that this country refuses to deliver up persons charged with such offences, if a foreign government were to obtain the surrender of a prisoner on the pretence of trying him for an offence in respect of which extradition can be claimed, for the purpose of trying him for an offence in respect of which it cannot; or, having obtained his surrender in respect of one of the former class, should take the opportunity of proceeding against him on one of the latter, its conduct would be disingenuous and dishonest, and would give rise to well-founded and serious complaint on the part of the Government of this country. But such a proceeding may easily be guarded against. It should be

expressly stipulated in any treaties entered into that a person surrendered on a particular charge should not be tried for any other offence, unless of an extraditional character; and, in all cases in which the surrender takes place otherwise than under treaty, the surrender should be made on the same condition. As regards political offenders, such a case would not present itself without its being known that there had been political disturbances in the country claiming the surrender; nor, if the alleged offender were a notable person, without its being known that he had made himself obnoxious to the government claiming him.

It is true, that, with regard to obscure individuals who might, if acquitted of the crime for which they are delivered up, run the risk of being tried, or detained without trial, on account of offences against political or local laws, neither the Government nor the magistrates in this country would be likely to know anything. The accused individual himself, however, cannot be ignorant that there is such risk. It seems, therefore, desirable that the accused should have full opportunity to show, not only that there is not a sufficient case for surrendering him to be tried for the crime in respect of which his surrender is demanded, but also that it is intended, in case of his surrender, to try or arbitrarily punish him for some offence for which he could not be surrendered; or at least that there is a risk that, if he is surrendered, he may be tried, punished, or detained for such an offence.

There could, indeed, seldom be strict legal evidence such as would justify a magistrate, or a court of law on *habeas corpus*, in finding that there was such an intention; and an enactment that the accused person shall not be surrendered if such an intent be proved would therefore probably not be of much use, except for the purpose of satisfying the reasonable jealousy of our own people; but there seems no objection to such an enactment, unless it be, that it might offend the susceptibilities of foreign countries.

The real practical remedy seems to be that the accused should have a right to demand an inquiry; on which inquiry there should be no restriction on the kind of evidence to be received, except that imposed by common sense; and that if the result of that inquiry should be that in the opinion of the Government a proper case has been made out, discretion should be given to the Government in favour of the accused, either to refuse to deliver him up at all, or to require, before delivering him up, a specific engagement from the foreign Government that if acquitted of the crime

for which he is demanded, or when he has suffered the punishment of that crime, he shall be at liberty to quit the country to which he has been surrendered. Such an engagement would probably seldom be refused. It may safely be assumed that no foreign Government would be so lost to a sense of its own honour and interest as to violate a pledge so given. If it were, the Order in Council enabling a surrender to that foreign Government should at once be revoked.

If these or similar precautions are adopted, there seems no reason why the foreign Government should, as a general rule, be required to engage not to try the person for any other extradition crime than the one in respect of which his surrender was obtained. It is obviously a serious objection to such a restriction that, if a person has been guilty of more than one extradition offence, either the foreign Government must bring to this country evidence of every crime which may be charged against the accused, the delay and expense of which would be very great, or the offender would escape in respect of all other crimes committed by him save the one on which he was surrendered. Moreover, it may well happen that the evidence of the one crime does not come out till the trial of the other.

The proposal that, before putting the person surrendered upon trial for another extradition offence, the consent of the surrendering Government should be required, seems objectionable, not only as occasioning expense and trouble to the prosecutors, but as entailing on the accused a detention in prison whilst the two Governments are negotiating. If the prisoner should be ultimately acquitted this might be a serious hardship. And its sole object seems to be to provide against a remote possibility of wrong, which, if the precautions above suggested are taken, would be sufficiently excluded.

VIII.—The existing statutes do not contain any provisions respecting the procedure to be adopted in this country, when application is about to be made to a foreign State for the surrender of an alleged criminal to Great Britain; and we learn, from Sir James Ingham, that the want of such provisions is sometimes a source of difficulty and inconvenience. It is the usual (and, in our opinion, the proper) course, for a warrant, for the arrest of the accused person, to be applied for and granted upon a sworn information; which, although sufficient to justify the British magistrate in issuing the warrant, may not (even in those cases in which it is necessary or proper to proceed on *ex parte*

evidence) be deemed sufficient to authorise the surrender by the foreign State. We think it is desirable that, in all cases, the evidence in support of the charge should be made as complete as possible, before the warrant is granted, but, for the purpose of supplying any accidental or unavoidable omissions in that evidence, we think the British magistrate should have power (which he is not now considered to possess) to receive and certify any supplementary depositions which may be offered to be sworn before him, and which the foreign jurisdiction may be willing to receive, *after*, as well as before the issue of the warrant. We recommend that provision for this purpose, as well as for regulation of the procedure before British magistrates in cases where extradition is to be obtained from another country, in accordance with the practice of which we have expressed our approval, should be made by law.

IX.—A cognate subject, to which (though it may not come strictly within the scope of our Commission) we think it right to advert is that of the means of following, from one part of Her Majesty's dominions into another, fugitive offenders, who have escaped from the jurisdiction within which their offences were committed, and ought to be tried. No sufficient means, for this purpose, are now provided by law; and it is obviously desirable, that this defect should be supplied. Inasmuch, however, as we are informed, that this subject has recently been, and is still, under the careful consideration of Her Majesty's Government, we do not think it necessary to dwell upon it any further.

X.—A valuable auxiliary in detecting crime and also in frustrating its purpose is, as is well known, to be found in the power of searching the premises of the accused, or other place to which he may be believed to have transferred stolen property or other *indicia* of crime. And it is frequently essential to the efficacy of such a search that it should be made contemporaneously with, or indeed, sometimes prior to, the arrest of the alleged offender. In the exercise of his ordinary jurisdiction in respect of a crime committed in this country, a magistrate has authority, upon a sworn information, to issue a search warrant at any time, whether before, after, or at the time of issuing the warrant for the apprehension of the accused.

In the case of an extradition offence the power of the magistrate, as given by section 9 of the Act of 1870, arises only "when the fugitive criminal *is brought* before him." The effect of which is that in the interval between the ap-

prehension of the accused and his being brought before the magistrate, ample opportunity is afforded to any friend or associate of the prisoner to remove stolen property, which it may be impossible afterwards to recover, or papers or other articles, which, like the stolen property, might afford material evidence of his guilt.

We are of opinion that this defect in the existing statute should be amended, and that the power of the magistrate in this particular should be put on the same footing in respect of an extradition offence as in respect of an offence committed in this country and coming within his ordinary jurisdiction.

XI.—By the third section of the statute referred to "a fugitive criminal shall not be surrendered until the expiration of 15 days from the date of his being committed to prison to await his surrender;" and by section 11 "if the police magistrate commits a fugitive prisoner to prison, he shall inform such criminal that he will not be surrendered until after the expiration of 15 days, and that he has a right to apply for a writ of *habeas corpus*." We are informed by the chief magistrate that, while applications for extradition are numerous, applications for writs of *habeas corpus* in cases of extradition are , are, and that when information is thus given to the fugitive criminal, as required by the statute, he almost invariably desires that he may be sent off at once. Sir J. Ingham suggests, therefore, that where the fugitive criminal, having been duly informed of the provision in question, declines to avail himself of the opportunity intended to be given him of applying for a writ of *habeas corpus* with a view to his liberation, and desires to be surrendered at once, it should be competent to the magistrate to commit him, and to certify to the Secretary of State that such request has been made, and thereupon the Secretary of State should be enabled to surrender him forthwith. We concur in this suggestion. The only purpose of the statutory provision is to enable a prisoner to obtain the protection of the law, if entitled to it. If he desires to waive the right thus given him, the delay becomes useless to him and vexatious to those asking for his surrender.

XII.—Foreign police authorities often make communications to the police authorities in this country by telegram. In this way it becomes known that a foreign warrant has been issued for the apprehension of a person accused of an extradition crime, who either is already in this country, or is expected to come by a ship then on its voy-

age. There is in such cases no reasonable doubt of the truth of the information thus sent by telegraph; but as the law now stands, the magistrates and the police in this country cannot legally act until the foreign warrant and the evidence in suport of it arrive here, and in the meantime the fugitive has the opportunity of escaping.

To remedy this a power to arrest and detain persons under such circumstances seems to be required.

We would therefore suggest that power should be given to a police magistrate (having reasonable grounds for believing that a person is accused of an extradition crime, and that a requisition for his surrender is about to be made) by his warrant to authorise any constable to arrest such person, and bring him before the magistrate, who should then have power to remand him for a reasonable time, or discharge him, as to him might seem just. To meet the cases, said not to be uncommon, where even the short delay occasioned by applying to a magistrate may be important, power might be given to the Home Secretary to select in each police district some of the superior police to be authorised to act in such cases. And constables of this class might be authorized, on reasonable grounds of suspicion that a person was a fugitive guilty of an extradition crime, to arrest him without warrant, and bring him forthwith before a justice of the peace, who should have power, as to him might seem just, either to direct the prisoner to be brought at once before a police magistrate, or to remand him, or to discharge him.

Such a power would be useful, and thus guarded, would not be likely to be abused.

XIII.—There is in the law relating to extradition, as it at present exists, a defect, by which extradition is liable to be frustrated, and to which, therefore, we think it necessary to call attention. It is that in the existing statutes no provision is made for dealing with the case of a criminal, who, having been surrendered by one foreign State to another, may be brought into British territory on his way from the one country to the other. A case has recently presented itself, which, though it did not occur on British territory, will fully illustrate what we mean. A man charged with having committed forgery in the United States was surrendered by the Peruvian Government to that of the United States. On his way to the latter country he had to be conveyed across the territory of Columbia. There being no extradition treaty between the Government of Columbia and that of the United States, the prisoner, who hav-

ing committed no offense against the Columbian law, was entitled by that law to his liberty, was set at large by the local authority. The same thing might, under the present law, happen in this country, even though there were an existing treaty between Great Britain and the State to which the surrender had been made, unless, indeed, a fresh demand for the extradition of the criminal were made, and the evidence necessary to support it were forthcoming in this country, which very possibly might not be the case. If, for instance, to take a possible cause, a man, surrendered by the French Government to that of Germany or Holland, were landed in this country, to be conveyed by land to a port on our eastern coast, to be thence shipped to his place of destination, the man would be entitled to be set free, unless a case sufficient to found a demand for extradition could at once be established here.

The same thing might happen if a ship, on which the prisoner had been embarked, being either a British ship or a foreign passenger ship, came in the course of transit into our waters. If the vessel were a ship of war it would depend on how far our courts would be prepared to treat such ship as part of the territory of the nation to which she belonged, and, as such, exempt from the jurisdiction of our law.

We recommend that statutory provision should be made to meet such a case, should it occur. With this view we suggest that it should be made competent to any justice of the peace, on the application of any consul of the State to whose officer a prisoner has been surrendered, or of any officer having charge of him, and on production of any warrant or other documents showing that the prisoner has been surrendered on the charge of having commited an extradition offence, to issue a warrant authorising his detention and transfer through and from British territory to the place to which it is desired to convey him. And, further, that it shall be a sufficient answer to an application for a writ of *habeas corpus* to show, in like manner, by the production of a warrant or other authentic document, that the prisoner has been surrendered in respect of an extradition offence.

We further recommend that endeavours should be made to obtain a corresponding provision in our own favour in treaties between this country and foreign States.

XIV.—If our suggestions should be adopted, further legislation will be necessary.

It is desirable that this legislation should be complete in itself. The means provided by the existing Acts for the fulfilment of engagements, entered into by this country in any existing treaties, must remain in force for that purpose, so long as those treaties continue. But extradition under future treaties, or the power, if it is thought expedient to give it, of surrendering to foreign Governments without any treaty, should be regulated by an Act complete in itself without reference to any previous legislation.

It may be assumed that the machinery for putting the Act in force, so far as relates to extradition to foreign countries will be the same in substance as that which is provided by the present Acts. But, if the suggestions which we have made are adopted, many of the provisions of those Acts (especially such as are contained in sections 2, 3, 4, 9, 11, and 19 of the Act of 1870), will require material alteration.

We do not recommend any change in the principle of existing Imperial legislation on this subject as regards the Colonies and foreign possessions of the Crown, as already contained in the Act of 1870.

A. E. Cockburn.
Selborne.
Blackburn.
Russell Gurney.
Richard Baggallay.
Wm. Baliol Brett.
Alfred Hy. Thesiger.
John Rose.
J. F. Stephen.
W. V. Harcourt.
W. M. Torrens (with the exception of Section VII, from which I feel compelled to dissent for the following reasons.)

George E. March, Secretary,
May 30, 1878.

It is the interest of every civilised Government to aid in the apprehension and expulsion of evil doers, who merely claim its hospitality to escape punishment. But it is not for the honour or interest of the Government of England to be made, unawares, instrumental in the pursuit and capture of fugitives from the resentment of absolute or irresponsible rulers. That such exist we know, and that they desire on various pleas the rendition of those who have offended

them, is not a matter of doubt; ostensibly on political or religious grounds a demand of surrender has long ceased to be made. The settled and acknowledged policy of our Government on this head may almost be thought to obviate the need of further provision by the Legislature, against a claim which has grown obsolete. The statute of 1870 was designed to guard against a different and more insidious danger, namely, that of our authorities being made use of to deliver up fugitives who have become the objects of suspicion, espionage, or persecution by arbitrary power, upon the alleged breach of some ordinary law for the protection of property or life. Every facility of primary accusation was meant to be given in the case of a foreigner resident within the realm which the criminal law affords for rendering amenable a native-born subject of the Crown. The same proof, *primâ facie*, was declared to be sufficient, while the just and obvious rule was declaratively enacted that the refugee should only be deported or detained in custody on the production of such evidence as would justify a magistrate in sending for trial any subject of the Queen for a like offence committed here. If the provisions of the Act are, in this respect, deemed insufficient after seven years' experience of their application, it will be the duty of Parliament to alter and amend them.

But their practical value would be put in jeopardy if the demand made by one Government, and by one only in Christendom, were conceded, that they should be so far repealed, that when an exile had been surrendered on presumptive proof of complicity in one out of a dozen common misdemeanors, he might after acquittal on that charge be kept in custody, with a view to be put upon his trial for some other offence or offences, of which not a shadow of proof had been offered to an English magistrate that he was possibly or probably guilty. Practically this might be misunderstood as an invitation to a foreign Government to deprive its subjects of the right of asylum in England, which, time out of mind, all our neighbors have enjoyed, irrespective of creed, race, or local institutions.

Clauses 3 and 19 of the Act of 1870 were designed to prevent possible injustice being done to an exile, against whom an accusation may be brought with proof *primâ facie* sufficient to warrant his committal here, but whose guilt may not be established upon trial in the foreign country. Our executive government was forbidden by Parliament to give up any foreigner without security by law, or specific agreement, that were a new charge subsequently preferred

against him he should again have the protection of the same just and merciful provisions which he had when first accused, and our Government was reciprocally directed to forego all claim to detain and try an exile in England on a second charge after he had been duly acquitted on the first.

To repeal this provision would appear to be a waiver by statute of our primary jurisdiction in the matter.

Had we to deal with countries only whose jurisprudence rests upon what England deems the principles of social and political civilization, there would perhaps be little risk in the concession. Criminal justice, as our people understand it and as our laws and courts interpret it, implies publicity of arraignment, confronting with the accuser, and the weighing of evidence by an irremovable judge, indifferent to the frown of power. It implies the verdict of a fair jury, a record open to legal scrutiny, and the fearless criticism of an unfettered press. In America, France, and other constitutional States, the hazard may be considered comparatively slight of any grave hardship arising from allowing a fugitive once surrendered to be twice or thrice indicted for different crimes.

But the law of 1870 was framed to meet other circumstances as well as these, and in the hope of establishing a uniform rule in our dealings with foreign States.

In lieu of the wise and just provision embodied in section III. of the Act of 1870 above referred to, it is proposed to give the accused an opportunity of volunteering such disclosures to the Secretary of State as may possibly lead to his exacting the pledge of restoration to a place of safety on acquittal. But this practically would re-impose on the Minister of the Crown the invidious duty in exceptional cases from which, on grounds of general policy, Parliament in 1870 unanimously decided on relieving him.

In truth, the fear entertained by those who are jealous of any lessening of the present safeguards against unfair and oppressive extradition, mainly rests upon the possibility of a person, when acquitted of one extradition offence, being detained in custody for an indefinite period on the imputation of one or more offences, none of which may have in them any political or religious character.

Parliament cannot affect ignorance of the disparity of foreign laws, and the repugnance to our own, of the principles on which criminal justice is frequently administered under them. It is a matter of notoriety, not of argument, that the presumption of innocence, which we regard as

fundamental, is not acknowledged in several of the greatest States of Europe; but, on the contrary, that the onus of disproof lies upon the accused; and that if he be not gifted by nature with coolness, self-possession, and a ready wit, or lucky in the possession of sufficient means to engage the services of an able advocate in meeting the imputations and insinuations of a Procureur-Imperial, he has little chance of escape, according to our notions of criminal justice. This method of dealing with such grave matters forms no part of the subject of inquiry by this Commission; but I think we are bound to keep in remembrance practices so irreconcileable with our ideas of criminal jurisprudence, and to take care that no supposed analogy to our established forms of procedure should render the authority of the Crown subservient unintentionally to working out schemes and purposes, which public opinion in England would not approve.

It is certain, for example, that within the last few years numbers of persons, suspected of sympathy with disaffection to the absolute rule of the Czar, have been summarily arrested and transported from the Grand Duchy of Warsaw to Siberia, without any form of public trial; and that thousands of Poles have been banished in this manner since 1864—the practice is called *transportation by administrative decree,* and all that is necessary in such cases is the decision of a governor, or an order from the chief of the police at St. Petersburg.

Is it too much to say, that if, to-morrow, an individual who had become obnoxious to the police, for any cause, however vague or uncertain, should seek refuge in this country, and should be surrendered on a charge of embezzlement or fraudulent bankruptcy, of which he might be acquitted by the ordinary tribunal, his subsequent liberty would not be worth an hour's purchase if our Government had exacted no pledge that he should be restored to liberty before being subjected to a second accusation? In certain continental states, as is well known, many ecclesiastics are liable to be indicted for infraction of laws relating to the administration of trust property. The priest of a country parish, the head of a monastic institution, or the bishop of a diocese, has heretofore stood in the position of a corporation sole, and has exercised discretionary powers in the distribution of religious and charitable funds. For non-observance of recent enactments he is now liable to arrest, fine, and imprisonment; but the matter being one of conscience, he may persist in evading the civil interdict by

contrivance and stratagem, and may sometimes be supposed to abet by counsel and encouragement the opposition widely maintained through the press and otherwise to the new legislation. If he should seek refuge in exile, ought an English Secretary of State to be liable under treaty to be called on to give him up because the magistrate at Bow Street had evidence before him of allegations that he had misused trust property by retaining or disbursing it in breach of municipal law, without a pledge from the foreign Government that, if acquitted of the charge in the sense wherein alone one of our own people could be made amenable to English law, he should be replaced within the dominions of the Queen?

The definition of what constitutes a breach of political laws, that is to say, of laws exceptionally enacted in consequence of social, ecclesiastical, or dynastic controversies, is beyond the reach of our executive or judicial authority. The attempt to draw the line of distinction has frequently been made, but has always failed; and to leave the question as a nest-egg of diplomatic complication did not seem dignified or prudent in 1870, when Parliament legislated on the subject. On all hands it was then agreed that, as far as possible, the invidious discretion of giving up, or refusing to give up, the fugitive subjects of foreign Governments should be taken from the administration of the day, and reposed in the judiciary. It is indeed worthy of note that no foreign Government whatever has objected in principle to the stipulation against detention for trial upon a second charge. On behalf of the United States, Mr. Secretary Fish explicitly recognised its propriety and justice, and it was confessedly on wholly different grounds that the misunderstanding arose which has led to so much diplomatic correspondence. The susceptibilities of America were touched, not by a proposal that this stipulation should be made reciprocal by a new treaty with Great Britain, but at being told that the conditions of the Ashburton Treaty of 1843 had been modified by an Act of the United Parliament. It seems incredible that such a difficulty should not be capable of removal without the abnegation by our Legislature of safeguards for international justice which only seven years ago were deliberately enacted.

As the misunderstanding with America turns wholly on the retrospective effect of the Act of 1870, never contemplated by Parliament, yet not unnaturally repudiated as inadmissible by Congress; there need be no difficulty in passing an Act of indemnity applicable to all past and present cases in which a surrender is made to the United

States without a guarantee in the event of acquittal; with the view to a new treaty of extradition wherein an assurance against trial on a second charge shall be embodied.

While the Commission has been sitting, another notable adhesion to the policy of 1870 has been given by the ratification of an amended extradition treaty on the part of France, specifically embodying the principle that a refugee acquitted on one accusation ought to be replaced within the confines of asylum before he is made amenable on any second charge.

Dispatch No. 287 from Welsh to Evarts, dated May 24, 1879

No. 287. Legation of the United States,
London, May 24, 1879.

The Honble. William M. Evarts,
Secretary of State,
&c &c &c
Washington.

Sir.

Count de Bylandt, the Netherlands Minister here, came to see me on Thursday, and told me of the escape to America of the chief criminal in a recent very heavy defalcation in Holland, desiring to know as to the possibility of his being given up by the United States. I informed him that it had not been a practice of the United States to deliver fugitives from justice as a matter of comity; that a treaty was a necessity; but that it was possible that a treaty might be negotiated under which the fugitive, if remaining in the country, would be returned for trial. This was the extent of our communication upon the subject.

I have the honor to be, with great respect,

Your obedient servant,

JOHN WELSH.

Note from West to Davis, dated February 16, 1882

Dip. File

16 Feby. 1882

Dear Mr. Bancroft Davis

I send you a "memo" which in a few words will show you where the hitch is in Extradition cases and I confess I dont see the way to its removal.

Yours very truly,

L. S. Sackville West.

Copy of this with letter to Edmunds and with letter to Reed.
File disposed of
See letter to Senator Edmunds 20th File

Memorandum.

Extradition Treaty of 1842 between Great Britain and the United States.

The tenth Article of this Treaty provides that "This" (i.e. the surrender of the Criminal) "shall only be done upon such evidence of criminality as, according to the laws of the place where the fugitive or person so charged shall be found, would justify his *apprehension and commitment for trial* if the crime or offence had there been committed . . . ."

Section 5271, Revised Statutes of the United States, 1878, makes it incumbent that the documents constituting evidence in Extradition Cases shall be properly and legally authenticated so as to entitle them to be received *as evidence of the criminality of the person so apprehended* by the tribunals of the foreign country from which the accused party shall have escaped.

English law does not admit that informations depositions and Warrants can be received as evidence of the criminality of persons apprehended and hence the conflict between the treaty and the Act of Congress.

If the Act of Congress can be construed as meaning that *the documents must be properly and legally authenticated by the English tribunals, so as to enable them to be received in evidence of the criminality of the fugitive by the tribunals of the United States,* no difficulty can arise, but if the intention of that Act is that the documents should be certified as being authenticated so as to entitle them to be received by the English tribunals *as evidence of the criminality of the fugitive,* it is not possible to comply with such a requirement.

The latter construction of the Act has been adopted by Judge Blatchford, which, if applied to Extradition cases under the treaty would therefore necessarily render it null and void. In the case upon which the Judge gave this opinion he subsequently admitted the sworn depositions and oral testimony of the police officer as sufficient, and it would seem therefore that it might be possible to make such evidence consistent with his construction of the Act.

Note from West to Frelinghuysen, dated March 11, 1882

(Department of State Mch 12 1882 Received)

Washington.
March 11, 1882.

The Honourable
Frederick T. Frelinghuysen.
&c. &c. &c.

Sir,

With reference to questions which have arisen respecting the authentication of Legal Documents forwarded to the United States in support of applications for the surrender of fugitive Criminals under the Extradition clause of the Ashburton Treaty, I have the honour to inform you that Her Majesty's Government have instructed me to state to the Government of the United States that the view taken of this matter by the United States Judicial Authorities makes all Extradition from the United States practically impossible, and Her Majesty's Government therefore suggest that such an alteration as may be possible should be made in the United States Statute as will enable the system of Extradition to be worked according to the intention of the Treaty between the two Countries.

Trusting that you will see fit to bring this matter under the consideration of the competent authorities,

I have the honour to be, with the highest Consideration,

Sir,

Your obedient servant,

L. S. Sackville West.

Note from West to Frelinghuysen, dated January 30, 1883

(Department of State Jan 31 1883 Received)

The Hon'ble
Frederick T. Frelinghuysen
Sir,

Referring to conversations which I have had the honour to hold with you on the subject of the Extradition of fugitives under the provisions of Article X of the Treaty of 1842, between Great Britain and the United States, I have the honour to inform you that Her Majesty's Government are fully alive to the inconvenience arising from the insufficiency of those provisions, and that they are of opinion that it would be highly expedient to have a new and fuller Extradition arrangement with the Government of the United States. To this end therefore Her Majesty's Government have instructed me to inform the Government of the United States that they are willing to enter at once into the consideration of the subject with the view to the conclusion of a Treaty of Extradition in substitution of Article X of the above mentioned Treaty of 1842 and that they would be glad in the first place to be informed as to the views of the United States Government respecting the form of Treaty which would be desirable.

I have the honour to be,

with the highest consideration,

Sir,

Your obedient servant,

L. S. Sackville West.

Note from Frelinghuysen to unidentified party (presumably West) dated Feb. 8, 1883

Department of State,
Washington, February 8, 1883.

To the same.

Sir:

Acknowledging the receipt of your note of the 30th ultimo concerning the extradition of fugitives under the provisions of Article X of the treaty of 1842, and the proposition for the conclusion of a treaty of Extradition in substitution of said Article X, I have the honor to inform you

that the matter is receiving the attention of this Government.

I have the honor to be etc.

FRED'K T. FRELINGHUYSEN.

Note from West to Frelinghuysen dated March 18, 1883

(Department of State Mar 20 1883 Received)

Washington
March 18, 1883

Honorable
Frederick T. Frelinghuysen

Sir,

Referring to my note of the 30th of January last and to your reply under date of the 8th February concerning the extradition of fugitives under the provisions of Article X of the Treaty of 1842, and the propositions for the conclusion of a Treaty of Extradition in substitution of the said Article X, I have the honour to inform you that in view of this matter having received the attention of the United States Government, Her Majesty's Government are anxious that it should be pressed forward as much as possible, in order that the Treaty relations of the two countries, in all that relates to Extradition cases, may be placed on a satisfactory footing. To this end, therefore, and with your further consent, I propose to confer with Mr. Adee, Third Assistant Secretary, as to the best means of bringing the negotiations to a speedy and successful truce.

I have the honour to be, with the highest consideration,

Sir,

Your obedient Servant,

L. S. SACKVILLE WEST.

Note from Frelinghuysen to West, dated March 22, 1883

Personal.

Department of State,
Washington, March 22, 1883.

To the same.

My dear Mr. West:

Pending a more formal acknowledgment of your note of the 18th instant, concerning the negotiation of a new Extradition Treaty, I ought to tell you that Mr. Adee's very urgent occupations, joined to his suffering from a bad cold for a month past, have prevented his making the report I called for showing the history of past unsuccessful negotiations. I hope he will soon be able to do this, and be in a position to confer with you as you suggest.

I am, my dear Mr. West,

Very faithfully yours,

FREDK. T. FRELINGHUYSEN.

Note from Adee to West, dated dated April 14, 1883

Department of State,
Washington, April 14, 1883.

To the same.

My dear Mr. West:

Having familiarized myself with the details of the negotiations heretofore I am now ready to comply with Mr. Frelinghuysen's desire that I should confer with you on the preliminary bases of negotiation for a new Extradition Treaty.

It will give me great pleasure to place myself at your command on Monday or Tuesday next, at any hour between 10 and 2 which may suit your convenience.

I am, my dear Mr. West

Very faithfully yours

ALVEY A. ADEE.

Note from West to Frelinghuysen
dated May 9, 1883

(Department of State Received May 11 1883)

Answered May 11, 1883
Mr. Adee's draft
Philp

Washington
May 9 1883

The Honourable
Frederick T. Frelinghuysen

Sir,

I have the honour to transmit herewith copy of an approved report of a Committee of the Privy Council of Canada embodying a report of the Minister of Justice of that Government on the Subject of Extraditable offences between Canada and the United States, a subject Lord Lorne states in his Despatch to me much requiring early consideration. I have the honour to be with the highest consideration, Sir,

Your obedient Servant,

L. S. Sackville West.

Copy

Certified copy of a Report of a Committee of the Hon'l the Privy Council for Canada, approved by H. E. the Gov'r-Gen'l on the 4th day of May /83

On a report dated 2nd March /83 from the Min'r of Justice stating that he has had under consideration a Mem'm under date 3d February. Also from H. E. the Gov'r-Gen'l calling attention to the desirability of extending the list of extraditable offences between Canada and the U. S.

The Minister decrees that it is discreditable to both Countries that extraditable offences are confined to the following crimes (1) Murder, (2) Assault with intent to commit murder (3) Piracy, (4) Arson (5) Robbery (6) Forgery, and (7) the utterance of Forged Paper, and this list should be extended to include all serious offences.

The Min'r regrets to say that the offence of embezzlement to take for illustration, is not an uncommon one from either country, and unless the embezzlement is connected with some act that can be construed as forgery, the offender cannot be extradited.

The cases of Hall and Phipps call especial attention to this.

All the trouble and delay and expensive litigation in the Hall case would have been saved had the United States authorities been able to ask for his extradition for embezzlement, and not have been forced as they were to seek it on the ground that he had committed forgery. This possible too, that they may yet be obliged to try him for his real offence in addition to or on failing to convict him for his alleged offence.

The Min'r further observes that by "The Extradition Act 1870" (Imperial) it is provided that a fugitive Criminal shall not be surrendered to a foreign State unless provision is made by the Law of that State or by arrangement, that the fugitive Criminal shall not until he has been restored to or had an opportunity of returning to H. M. Dominions be detained or tried in the foreign State for any offence to be committed prior to his surrender other than the extradition crime proved by the facts on which the surrender is given.

Since the Winslow case fugitive Criminals have been extradited at the request of the United States authorities although no such law or arrangement exists, and have been left to be dealt with as they thought proper.

This and the manner in which it is alleged some fugitive criminals so extradited have been dealt with, has tended to bring the administration of the Treaty into dispute.

The Minister is of opinion that in this connection it may not be improper to refer to the difficulties attending the conveying of Prisoners under Sentence from the Cassiai District, British Columbia, to Victoria or New Westminster for imprisonment. These difficulties are again brought under notice by a communication dated 5th December last from Sir Matthew B. Begbie, Chief Justice of British Columbia to Y. E. and which was referred to the Minister of Justice.

The Minister represents that attention was first called to this matter in 1876 by the case of Peter Martin *alias* Brick-top, the full particulars of which can be found in Sessional papers No. 125 of 1878, Vol. II pg. 90 and following.

Chief Justice Begbie again called attention to the matter in 1879, when a report was made by the then Deputy Minister of Justice upon which no action was taken.

The Minister further represents that the U. S. authorities are subject to quite as great difficulties in the adminis-

tration of Justice in Alaska, and that they are obliged to remove prisoners from Wrangel to Portland, in doing which they, not of necessity but by reason of greater convenience, pass through the territorial waters of Canada. In these cases Canada could on the same ground which they urged in the Martin case demand from the U. S. Authorities the release of these prisoners.

The Minister is of opinion that Canada has followed the wise course in not raising any question as to the violation of the Sovereignty of British Soil in these cases, where the only result would have been to have assisted Criminals to escape trial or punishment and to have offered them a safe asylum in this Country, and, situated as the United States and Canada are, it is in the interest of a healthy administration of Justice that each Country give to the other the utmost support and assistance in the arrest and bringing to trial of Criminals.

The Min'r advises that steps be taken to request the Imp'l Authorities to open negotiations with the U. S. for a new Treaty extending the number of extraditable offences, and that in the interest of the Administration of Justice, it be agreed and made part of the Treaty, that where a person is arrested in either country for an extraditable offence, and it becomes necessary either for trial or for punishment after trial to convey him through the other Country, it shall be lawful for the officer in charge to so convey him on the warrant under which he was arrested, the Sovereignty of the Country through which the prisoner is to be conveyed being recognized by a provision that the warrant be backed by a Magistrate of that Country.

The Committee concur in the foregoing report of the Min'r of Justice and they respectfully recommend that Y. E. will be pleased to transmit the minute when approved, to H. M. Principal Secretary of State for the Colonies coupled with such recommendation from Y. E. as may lead to bringing about the solution of a question in which Y. E. has taken an active interest.

(Sd) JOHN T. MCGEE,
Clerk, Queen's T. C.
Canada.

Note from Davis (Acting Secretary) to West, dated May 25, 1883

Department of State,
Washington, May 25, 1883.

The Hon'ble L. S. Sackville West
&c. &c. &c.

Sir:

I have the honor to acknowledge the receipt of your note of the 9th instant, transmitting copy of an approved report of a committee of the Privy Council of Canada, embodying a report of the Minister of Justice of that Government on the subject of extraditable offenses between Canada and the United States of America, a subject which, as you inform this Department, H. E. the Governor General considers as one "much requiring early consideration."

The suggestions of H. E. will be borne in mind in the lately reopened negotiation for a new Extradition Treaty between this country and Great Britain.

I have the honor to be &c.

JOHN DAVIS,
Acting Secretary.

Note from West to Frelinghuysen, dated June 28, 1883

(Department of State Received Jun 30 1883)

Washington
June 28, 1883

The Honourable
Frederick T. Frelinghuysen

Sir,

With reference to the proposals for a new Treaty of Extradition between Great Britain and the United States which formed the subject of my note to you of the 18th of March last and to previous correspondence thereupon, I have the honour to inform you that Her Majesty's Government attach so great an importance to the conclusion of a new and extended Extradition Treaty with the United States that they are of opinion that the difficulties which have formerly existed upon this point ought not to be allowed to stand in the way of an object of such grave international importance.

The United States Government is aware that existing legislation in Great Britain does not permit the conclusion of a new Treaty which would allow a criminal surrendered for one crime to be tried for another until he has had an opportunity of returning to the Country from which he was surrendered, but Her Majesty's Government would be prepared to introduce a Bill into Parliament for the purpose of removing this difficulty which has been raised to the negotiation of a new Treaty on the part of the Government of the United States, provided that it is understood, that Her Majesty's Government could only consent to recommend such a measure to Parliament on the understanding that it would limit the liability of the criminal to be tried for another offence to those cases where such second offence should be comprised in the list of extradition crimes enumerated in the Treaty, and that until the existing extradition act is amended by fresh legislation such a provision could not be inserted in a Treaty. If this preliminary difficulty were removed, and the United States Government would furnish me with a draft for submission to Her Majesty's Government embodying proposals on the various points alluded to in a memorandum drawn up by Mr. Adee, and forwarded by me to Her Majesty's Government, they would be in a position to consider exactly what powers it would be necessary to obtain from Parliament, and a draft Treaty might be agreed to on the understanding that it would not be finally concluded until those powers had been obtained.

In making this communication I am, at the same time, requested by Earl Granville to state to you that Her Majesty's Government invite the early and earnest consideration of the Government of the United States to this subject.

I have the honour to be, with the highest consideration.
Sir,
Your obedient Servant,

L. S. Sackville West.

Note from Frelinghuysen to West, dated July 7, 1883

Department of State,
Washington, July 7, 1883.

To the same.

Sir:

I have the honor to acknowledge the receipt of your note of the 28th ultimo, in further reference to the proposals for a new Treaty of Extradition between Great Britain and the U. S. which have lately been the subject of correspondence between us.

It gives me much pleasure, because promising a speedy and harmonious conclusion of a negotiation now some ten years old to receive your announcement that Her Majesty's Government attach so great an importance to the conclusion of a new and extended Treaty of Extradition with this country that they are unwilling to permit the past difficulties to longer stand in the way of an object of such grave national importance; and that to this end H. M's Government would be prepared to introduce a bill in Parliament for the purpose of so modifying the existing legislation of Great Britain as to remove these difficulties by permitting a person surrendered for one crime to be tried for another provided it be understood that the liability of the criminal to such trial is limited to those cases where such second offense should be comprised in the list of extradition crimes enumerated in the Treaty.

In pursuance of your request, I hasten to lay before you a draft of an article to take the place of the IIId Article of the several drafts heretofore under discussion between this Department and your Legation between 1873 and 1877. In framing this draft, I have endeavored as nearly as may be to conform to the conclusions of the British Commission on Extradition of 1877 as found in the report submitted by Sir Alexander Cockburn and his associates,—an easy task for me in view of the close conformity of the principles of that report with those for which my predecessors contended in 1874 and 1877. In that report I find the following passages:

> "A question presents itself whether, if a person be surrendered in respect of one extradition offence, he should when transferred to the country claiming him be liable to be tried for another. *Political and local offences being excepted* we see no reason why he should not. * * *

"If there be another accusation against him *in respect of a crime which would properly be the subject of extradition*, we see no reason why he should not be called upon to answer it. It may be discovered after the surrender that the party surrendered has committed some other offense deserving of punishment; or proofs previously wanting, of such other offense may be brought to light. We see no reason why, under such circumstances, the offender should escape with impunity. * * *

"It should be expressly stipulated in any treaties entered into, that a person surrendered on a particular charge *should not be tried for any other offense, unless of an extraditional character.* * * * The real practical remedy seems to be that the accused should have a right to demand an inquiry; * * * and that if the result of that inquiry should be that *in the opinion of the Government a proper case has been made out*; discretion should be given to the Government in favor of the accused, either to refuse to deliver him up at all or to require, before delivering him up, a specific engagement from the foreign Government that if acquitted of the crime for which he is demanded" [that is, the crime or crimes enumerated and for which alone the Treaty allows his trial] "or when he has suffered the punishment of that crime he shall be at liberty to quit the country to which he has been surrendered. * * * If these or similar precautions are adopted there seems no reason why the foreign Government should, as a general rule, be required to engage not to try the person for any other extradition crime than the one in respect of which his surrender was obtained * * * The proposal that, before putting the person surrendered upon trial for another extradition offense, the consent of the surrendering government should be required, seems objectionable." * * * * *

The Royal Commission base their waiver of the guarantee of non-trial for other than the surrender offense on the argument that the stipulation of non-trial for a political offense or for an offense not enumerated in the treaty, may be so positively stated and fortified that evasion thereof—except in bad faith, a contingency not to be anticipated—is not possible. This entirely agrees with the view of this Government during the past negotiation; and Article IV of Mr. Fish's draft of December 28, 1876, contained a stipulation in the positive terms which the Commission

regarded as proper and desirable. If, however, Mr. Fish's Article IV does not entirely meet the views of Her M's Government, I shall be pleased to consider with you a modified draft approximating more closely to the tenor of the 4th Article, of the Extradition Treaty between Great Britain and Germany.

An accord once reached on Articles III and IV, I flatter myself that the drawing up of the remainder of a satisfactory treaty will offer no difficulty.

I have the honor, to be, with the highest consideration,

Sir,

Your Obedient Servant,

FRED'K. T. FRELINGHUYSEN.

ARTICLE III.

A fugitive criminal, surrendered by or to either of the Contracting Parties for trial for the crime or offense named in the extradition warrant, may be tried for any other of the crimes or offenses, committed prior to his extradition, enumerated in Article I; Provided that, in order that the Government that shall have made the surrender may be assured that the provisions of the Treaty are not about to be violated or that it may remonstrate against the person so surrendered being held for such further trial if in its opinion they are about to be infracted, notice of not less than sixty days shall be given to such Government of the intention to try such surrendered fugitive criminal for such enumerated crime or offense, with such specification of such crime or offense charged as shall identify it to be among the crimes or offenses enumerated in Article I.

No person surrendered by or to either of the Contracting Parties shall be triable or be tried for any crime or offense committed prior to his extradition, other than the offenses enumerated in Article I, until he shall have had an opportunity of returning to the country from which he was surrendered. An interval of [thirty or sixty] days, between his being set at liberty in respect of the charge on which his surrender had been made and his arrest upon any other charge, shall be sufficient evidence of such opportunity.

[Article IV of Mr. Fish's draft of December 28, 1876.]

ARTICLE IV.

The provisions of this treaty shall not apply to any crime or offense of a political character, nor to acts connected with such crimes or offenses; and no person surrendered by or to either of the Contracting Parties in virtue hereof shall be tried or punished for any political crime or offense, nor for any act connected therewith, committed previously to his extradition.

Note from West to Frelinghuysen, dated July 11, 1883

(Department of State Jul 12 1883 Received)

Washington
July 11, 1883

Honourable
Frederick T. Frelinghuysen
Sir,

I have the honour to acknowledge the receipt of your note of the 7th instant and to inform you that I have lost no time in transmitting to Earl Granville the two Draft Articles therein inclosed proposed by the United States Government to form part of the new Extradition Treaty.

I have the honour to be with the highest consideration,

Sir,

Your obedient Servant,

L. S. SACKVILLE WEST.

Note from Frelinghuysen to Lowell, dated May 21, 1884

No. 869.

Department of State,
Washington, May 21, 1884.

James R. Lowell, Esq.
&c. &c. &c.
Sir:

I enclose herewith for the use of your Legation, copies of Ex. Doc. No. 156, H. of R., 48 Congress, 1st Session, concerning extradition of criminals under treaty of 1842, with Great Britain.

I am, Sir, etc.

FRED'K T. FRELINGHUYSEN.

Enclosures:
3 copies of above document.

Dispatch No. 915, Frelinghuysen to Lowell, dated July 15, 1884

No. 915. Department of State,
Washington, July 15, 1884.

James Russell Lowell, Esq.
&c. &c. &c.

Sir:

The revision of the treaty engagements between the United States and Great Britain in respect of extradition has been an almost constantly pending question since 1870.

The present stipulations, which resulted from a proposal made in 1839, are embraced in a single article, found in the Treaty of 1842 as Article X. Following the primitive construction of the earlier extradition treaties it was silent as to definite procedure, and comprised a list of only seven crimes, namely: (1) murder, (2) assault with intent to commit murder, (3) piracy, (4) arson, (5) robbery, (6) forgery, and (7) the utterance of forged paper.

While evidently deficient in its enumeration of crimes, the comprehensiveness and simplicity of the engagement, and the fact that the determination of the sufficiency of the charge on which extradition is sought is left to the competency of the surrendering country, has kept its operation singularly free from friction during forty-two years, save as to one point, resting on the domestic legislation of Great Britain, in respect of which the stipulation of 1842 was silent for the simple reason that the legislation in question post-dated the treaty by twenty-eight years.

In 1870 Parliament passed an Act, the 3d and 19th clauses of which provided that no person should be given up under proceedings of extradition without assurance resting on the law of the demanding country or on specific agreement, that were a new charge subsequently preferred against him, he should not be tried thereunder.

On the 22nd of September, 1870, Sir Edward Thornton brought this Act to Mr. Fish's attention and proposed negotiating an arrangement within the provisions of the Act. The negotiation was begun and progressed through various stages of argument and detail until an accord not much at variance with the British proposal seemed near at hand, when the attempt failed through a secondary question coming into prominence. Both parties were agreed that surrender should not take place on a political charge. The British ground, as held by Sir Edward Thornton, was that the accused should be, under the terms of the act, specifically allowed to adduce proof that his extradition is

sought for the purpose of trying him for a political offense, and that the issue so presented should be decided by the examining magistrate or court. Mr. Fish held that the political aspects of any case should be decided by the Government upon which the demand was made. He intimated, and rightly as we think, that the provision was superfluous; that the treaty containing an express provision against the trial of a surrendered person for any political offense, it would imply distrust on both sides to admit even hypothetically that either Government might deliberately intend to violate that solemn pledge, and would formulate that distrust with offensive prominence if a stipulation were introduced permitting the accused to produce evidence of such intent, and leaving the decision as to the existence of such intent to a local magistrate of the other country.

On the 11th of June, 1874 Sir Edward Thornton informed Mr. Fish that Lord Derby had instructed him, by telegraph, that after full consideration, it is impossible to comply with the proposal that the political department of the surrendering Government should decide whether the demand is made with a view to try the alleged criminal for a political offense, and that it would be useless to ask Parliament to alter the Act of 1870 in that respect."

Here, the negotiation dropped; for a time.

In 1875, the dispute concerning Lawrence, the forger, arose, Lawrence's extradition had been demanded on a dozen distinct counts of forgery, and he had been surrendered on one count alone. The charge on that count proving defective the New York court proceeded to take up the other counts for the same offense. Her Majesty's Government demanded that, according to the Act of 1870, assurance should be given that Lawrence should not be tried for any other than the extradition crime proved by the facts on which the surrender was grounded. This assurance could not be given. As a result, the operation of the extradition article was for a time suspended, and justice failed in several cases, to the manifest inconvenience of both countries. The situation so created became at last intolerable, and the dispute was ended by the tacit admission on the part of Her Majesty's Government that the domestic Act of one of the parties should not control an international compact made before its passage. An agreement was entered into that the Xth Article of the Treaty of 1842 should continue effective between the two Governments, according to its terms, until replaced by a new Treaty. The

British declaration to this effect appears in a note addressed by Sir Edward Thornton to Mr. Fish under date of October 27, 1876, since when no dispute has occurred.

On the same day, October 27, 1876, Sir Edward Thornton formally renewed the proposal for a revised Treaty, and submitted a draft thereof, in which Article III of the previous drafts which provided for the non-trial of a surrendered person for other than the extradition offense, was left blank, and Article IV, with regard to proof of purpose to try him for a political offense, was given in the words of the existing Extradition Treaty between Great Britain and Germany, which is silent as to whether the political question involved is to be determined by the judicial or political department of the surrendering Government.

The attitude of this Government as to the question of non-trial for a political offense, or for other than an extraditable offense, had before this been distinctly stated by Mr. Fish in the course of the discussion which followed the Lawrence case. By a memorandum of a conversation between Mr. Fish and Sir Edward Thornton, held May 27, 1876, it appears that Mr. Fish stated that the U. S. would not object, in any negotiation thereafter entered upon, that the Treaty should provide to the effect that a surrendered person should not be tried for any crime or crimes other than such as are of the class enumerated in the Treaty, as extradition crimes, and that, with such a provision in the Treaty, and with the similarity of feeling of the two Governments and of their people on the question of political asylum, a full protection would be secured against the trial of a surrendered fugitive for any political offense, and that if any violation of such provision should be made by either party, the surrendering state would be justified in denouncing the Treaty and in holding the other party to its responsibility for a violation of the conventional arrangement.

The proposal of October 27, 1876, to revive the negotiation of a new Treaty was accepted by Mr. Fish, and on the 28th of December of that year, Mr. Fish submitted to Sir Edward Thornton a revised draft treaty, embodying all the latest points on which accord had been previously reached and enunciating in the IIId and IVth Articles, the position of this Government on the disputed points.

That draft does not appear to have led to any agreement. On March 3, 1877, Sir Edward Thornton in answer to an inquiry of Mr. Fish informed him that he was authorized by telegram to conclude a Treaty forthwith in con-

formity with the requirements of the British Act of 1870, and to offer to the United States their choice of any of the Extradition Treaties concluded by Great Britain since that Act.

Mr. Evarts, who had succeeded Mr. Fish, after examining eleven British Extradition Treaties furnished to him by Mr. Plunkett, the British Chargé d'Affairs *ad interim* without finding motive therein to depart from the principles advanced by Mr. Fish, endeavored to bring the negotiation back to the point at which an accord had seemed so near in 1876, which brought about Earl Derby's declaration communicated through Mr. Plunkett, August 2, 1877, that Her Majesty's Government was precluded by the Act of 1870 from entering into any arrangement inconsistent with that Act, and that it was therefore, necessary, if the United States Government continued to insist on a special form of treaty, for Her Majesty's Government to consider whether Parliament will be disposed to amend that Act, and if so, to what extent.

On the 12th of September, 1877 Mr. Plunkett informed Mr. Evarts that a Royal Commission had been appointed to consider the whole subject of extradition, and it was trusted that its deliberations would afford a solution of the legal difficulties then attending the negotiation of a new Treaty.

Here the negotiation again came to a standstill.

The Royal Commission, under the Presidency of Sir Alexander Cockburn, made a Report on the 30th of May, 1878, a copy of which will be found printed in the Foreign Relations of the United States for 1878, pages 269 to 278. It took, in the main, what appears to this Government to be a very broad, safe and just view of the whole matter, and recommended certain amendments of the Act of 1870 in the sense of its conclusions.

For the purpose of this instruction it is not necessary to examine that Report in detail, or to do more than say that, in respect of the only two points on which the two Governments differed, it is entirely consistent with the views which this Government had already advanced. Indeed, the IIId and IVth articles of Mr. Fish's later drafts would almost seem to have been written in view of the conclusions of the Royal Commission, so nearly do they conform therewith.

It does not appear that any changes in the Act of 1870, have been effected pursuant to that Report.

The present stage of the negotiation was inaugurated January 30, 1883, by a note from Mr. West, stating that

Her Majesty's Government were willing to enter at once into the consideration of the subject with the view to the conclusion of a Treaty of Extradition in Substitution of Article X of the Treaty of 1842, and that they would be glad in the first place to be informed as to the views of this Government respecting the form of Treaty which would be desirable.

The proposal to consider the question being accepted, a conference was had on the 16th of April, 1883, with Mr. West. After passing in review the previous negotiations conducted by Sir Edward Thornton with Mr. Fish and Mr. Evarts, it was agreed to regard Mr. Fish's latest draft of December 1876 as representing a substantial accord on all points save those embraced in Articles III and IV. These were examined in detail, in connection with the Act of 1870. The IVth Article, guarding against trial for political offenses, seemed to offer us insuperable difficulty, either Mr. Fish's draft, or the text of the corresponding article in the existing Anglo-German Treaty being compatible with the Act without determining whether its provisions are to be applied by the judicial or the political authority of the surrendering country. As to Article III, after considering all the drafts and verbal changes proposed by Mr. Fish, Sir Edward Thornton and Mr. Evarts, it appeared that any phraseology whereby trial of the surrendered person might be had for any other than the surrender-crime, even though one of those enumerated in the Treaty would conflict with the letter of the Act of 1870. Mr. West said that he thought it would be possible to come to an understanding on this point also, and that any departure from the Act of 1870 might be covered by an Order in Council, under the general authority of Section 2 of the Act which provides that its operation may be made subject to such conditions, exceptions and qualifications as may be deemed expedient. Such an Order in Council, he said, would be practically a part of the Treaty and determine its life, for if the Order were subsequently annulled, it would be equivalent to abrogating the Treaty itself by the act of Great Britain. I became satisfied that a literal acquiescence with the text of the Act of 1870 would be a bar to any hopeful negotiation, but that the declared policy of this Government, and the conclusions of the Royal Commission, alike counselled a departure therefrom. Mr. West thereupon inquired whether he was authorized to say that we would take Mr. Fish's draft of December, 1876, as the basis of a new departure, subject to the discussion of Article III and IV, and

subject also to discussion of such verbal changes and definitions as experience might suggest, to which assent was given.

The question of including an Article providing for the transit across the territories of either party of a criminal surrendered by or to the other in pursuance of engagements with a third power, was then touched upon, and the conclusion was reached that such a provision, which had not before been suggested by either party, might be of decided advantage to both countries.

As the result of this conversation, Mr. West was given a brief memorandum of the bases on which it was thought the preliminary negotiation might advantageously be started.

A copy of this memorandum, dated April 16, 1883, was sent by Mr. West to Lord Granville.

On the 28th of June, 1883, another conversation with Mr. West took place, in which Mr. West inquired whether the United States positively objected to conduct the negotiation on the bases of non-trial for other than the surrender offense, and if so, why! The position taken by this Government was thereupon recited and the belief expressed that a negotiation could not be conducted on any other basis. Mr. West thereupon said that in view of this positive statement he would forthwith communicate to this government an instruction he had just received from Lord Granville.

The next day, June 29, 1883, Mr. West addressed me a note in which he said that Her Majesty's Government attached so great an importance to the conclusion of a new and extended Extradition Treaty with the United States, that they were of the opinion that the difficulties heretofore found to exist should no longer be allowed to stand in the way, and that they were prepared to recommend to Parliament the amendment of the Act of 1870 in a sense permitting the trial of a surrendered person for any other treaty offense. To the end of submitting the matter to Parliament, Mr. West was instructed to ask of me a draft article formulating the contention of the United States in this respect.

I promptly responded on the 7th of July following, and presented drafts of Articles III and IV, covering the points in dispute.

Since then, no communication has been received from Mr. West on the subject.

Copies of the material correspondence and papers in the later negotiation are herewith sent for your information.

It would be greatly to be regretted if the negotiation, having reached a stage where the two Governments appear to be in substantial agreement through the diplomatic channel, should now fail. This Government is disposed to leave no efforts unessayed to avert a result so detrimental to the interests of secure administration of justice in both countries.

Taking advantage of the approaching short visit of Mr. Adee to England in the course of a health voyage, I have to request that you will, if convenient, procure for him the opportunity of a verbal conversation with Lord Granville, in order that whatever efforts may be made to remove surviving obstacles, may be put forth.

Mr. Adee is thoroughly familiar with the whole course of the negotiation in Washington and is authorized to suggest to His Lordship the provisional adoption of a mutually satisfactory text, on which the action of Parliament may rest—if indeed the expedient of an Order in Council, spoken of by Mr. West, be not found to offer a practical solution of the difficulty.

Mr. Adee will confer frankly with you and if it is Lord Granville's pleasure to see Mr. Adee, you will of course be present and report the results.

It may be advisable for you to prepare His Lordship for consideration of the subject by informing him of the purport of this instruction.

I am, Sir &c.

FREDK. T. FRELINGHUYSEN.

Enclosures:

1. Mr. West to Mr. Frelinghuysen, Jan. 30, 1883.
2. Memorandum of Preliminary Bases, handed to Mr. West, April 16, 1883.
3. Mr. West to Mr. Frelinghuysen, June 29, 1883.
4. Mr. Frelinghuysen to Mr. West, July 7, 1883 (with drafts of Articles III and IV.)
5. Mr. West to Mr. Frelinghuysen, July 17, 1883.

Dispatch No. 820 from Lowell to Frelinghuysen, dated July 30, 1884

No. 820

The Honourable
F. T. Frelinghuysen
Secretary of State
Washington D. C.

Legation of the United States
London July 30th 1884

Sir.

Referring to your Number 915 of the 15th instant I have the honour to enclose herewith Mr. Adee's Report of an interview he had yesterday with Sir Julian Pauncefote at the Foreign Office in relation to the pending negotiation for a new Treaty of Extradition between the United States and Great Britain.

I have the honour to be with great respect
Your obedient Servant

J. R. Lowell.

Enclosure
Mr. Adee to Mr. Frelinghuysen
July 30th 1884—

United States Legation.
London, July 30, 1884.

The Honorable
Frederick T. Frelinghuysen,
Secretary of State.

Sir:

In pursuance of the line of action marked out in your Instruction to this Legation, No. 915 of July 15th, instant, Mr. Lowell arranged with Lord Granville for my visiting the Foreign Office yesterday, in order to confer with His Lordship respecting the pending negotiation for a new Treaty of Extradition.

At the appointed hour I was received by Lord Granville, who said that Mr. Lowell had indicated to him the nature of the business in hand, and that he had directed Sir Julian Pauncefote, the Under Secretary, to acquaint himself with the matter, to the end of holding a preliminary conversation with me. Being at that moment occupied with the Egyptian Conference, then in session, he asked that I should confer with Sir Julian.

The Under Secretary proved to be prepared for our conversation and was familiar with all the antecedents of

the negotiation conducted at Washington. He said that Her Majesty's Government was powerless to conclude a new treaty on bases which would be agreeable to the United States, until Parliament should have passed an Act revising and altering the Statute of 1870. The expedient of an order in Council, of which Mr. West had spoken, was only applicable to treaties in existence when the Act of 1870 was passed. Realizing the great importance of a new treaty, which should be so framed as to further the ends of justice in both countries, the Foreign Office had for some time past been in consultation with the Home Office, in order to prepare a Bill for presentation to Parliament. This had been nearly perfected, and he believed that, if perfected, its terms would admit of the conclusion of a treaty in substantial conformity with our views respecting Articles 3 and 4, as to which alone there had been divergence hitherto. He would forthwith obtain from the Home Office a copy of the draft Bill, and with it before us there would probably be no difficulty in disposing of the matter in a second conference.

I suggested that, if the draft bill were still under consideration, it might be advisable to leave the list of extradition offenses open for examination at our next meeting, with a view, if possible, to so enlarging the definition of the several classes of embezzlement as to leave no doubt touching the inclusion of the funds of banks of deposit and trust companies. Sir Julian took note of this, saying it struck him favorably, and that he would suggest it to the Home Office for insertion in the draft Bill.

It was then arranged that on my return to London in two or three weeks, another conference should be had. Sir Julian said that this would give him the time he needed to bring the matter into shape, for then the prorogation of Parliament (to take place next week) and the adjournment of the Egyptian Conference, would leave him freer than at present.

Mr. Lowell's ill health having compelled his absence from London for a few days, Mr. Hoppin accompanied me to the Foreign Office and was present at my interviews with Lord Granville and Sir Julian Pauncefote.

By Mr. Lowell's direction a copy of your No. 915 was prepared, and confidentially given to Lord Granville, as affording the most convenient preparation for His Lordship's consideration of the subject.

I have the honor to be, Sir,

Your obedient servant,

ALVEY A. ADEE.

Dispatch No. 948, Davis to Lowell, dated August 15, 1884

No. 948.

Department of State,
Washington, August 15, 1884.

James R. Lowell, Esq.
&c. &c. &c.

Sir:

The report of Mr. Adee, concerning his interview with the British Foreign Office in relation to a new treaty of extradition, which accompanied your despatch No. 820 of the 30th ultimo, has been received.

I am, Sir,

Your obedient Servant,

JOHN DAVIS,
Acting Secretary.

Dispatch No. 844, Lowell to Frelinghuysen, dated August 26, 1884

No. 844.

Legation of the United States
London August 26th 1884.

The Honourable
F. T. Frelinghuysen
Secretary of State
&c &c &c

Sir,

Referring to your Instruction No. 915, of 15th ultimo, I have the honour to inform you that on Friday the 22nd instant, I accompanied Mr. Adee to the Foreign Office where we had an interview with Sir J. Pauncefote, the Under Secretary of State for Foreign Affairs, and Mr. Bergue, Superintendent of the Treaty Department.

Mr. Adee had brought with him a Confidential Copy of the British provisional draft for the proposed Treaty together with his criticisms and comments thereon. Mr. Adee will report to you the result of this conference,—as well as of another with Sir ~~Augustus~~ Adolphus Siddell at the Home Office. I may be allowed to add what he will not report, and that is how much I was gratified with his clearness, acuteness, precision of thought, and mastery of the subject in it minutest detail.

I have the honour to be with great respect,

Your obedient Servant,

J. R. LOWELL.

Dispatch No. 979, Davis to Lowell, dated September 11, 1884

No. 979. Department of State,
Washington, Sept. 11, 1884.

James R. Lowell, Esq.
&c. &c. &c.

Sir:

I have to acknowledge the receipt of your despatch No. 844 of the 26th ultimo, in relation to the interview which Mr. Adee and yourself had with Sir J. Pauncefote and Mr. Bergue, on the 22nd ultimo, in regard to proposed extradition treaty between this country and Great Britain.

I am, Sir &c.

JOHN DAVIS,
Acting Secretary.

Telegram, Adee to Lowell, dated September 15, 1884

Cipher Telegram. Washington, Sept. 15 '84

Lowell
Minister
London

Get from Foreign Office printed text extradition treaty before executing telegram of this date.

ADEE.

Telegram, Frelinghuysen to Lowell, dated September 15, 1884

Cipher Telegram. Washington, Sept. 15 '84

Lowell
Minister
London.

Draft extradition treaty is in general acceptable, with two omissions from schedule of offenses and some verbal alterations, as follows:

Number five. Embezzlement or larceny of five hundred dollars or upwards in value.

Number six, false pretences, and seven; fraudulent bankruptcy, to be omitted.

Number twenty-two, wilfully sending unseaworthy ships to sea.

Number twenty-three, omit last three words "or unlawfully obtained."

Article thirteen. The words "by all legal means within its power" render the obligation nugatory. Provisional arrest is essentially extra-legal, and while we have never hesitated to grant it we do so at risk of habeas corpus proceedings. Alter to "each Government will endeavor to procure the provisional arrest" etcetera.

Article fifteen. Alter last three words "earliest in date" to "first received."

Article seventeen. Lines two and three to read "foreign possessions of Her Britannic Majesty over which Great Britain has sovereign jurisdiction." Line six, "such foreign possessions." Line twenty, "such foreign possessions as aforesaid." Lines twenty three and twenty eight, insert "such" before "foreign."

It has been suggested that the text of the treaty should be proposed by Great Britain and accepted by us. Our people would more readily accept the innovations and especially the destructive offenses clause knowing that they had been proposed by us. On being informed that Her Majesty's Government is prepared to enter into such a treaty as has been considered by the two Governments, I will, with Mr. West, sign the text as herein amended.

FRELINGHUYSEN.

Note from West to Frelinghuysen, dated November 4, 1884

Copy to Mr. Lowell for his personal information
Brief Ack
Ack Nov 17
Copy to Mr. Lowell Nov 17

(Department of State Nov 4 1884 Received.)

Mr. Edwards
Washington
November 4th 1884

Hon'ble F. T. Frelinghuysen
Secretary of State
&c. &c. &c.

Sir,

I have the honour to inform you that Earl Granville has requested me to state to you that Her Majesty's Government highly appreciated the advantage, which has been derived from the visit to England of Mr. Adee and that

they are fully sensible of the important progress which has been made towards a settlement of the questions connected with the proposed Extradition Treaty by the frank and able manner in which it has been discussed by Mr. Lowell and Mr. Adee.

I have the honour to be, with the highest consideration,
Sir

Your obedient servant,

L. S. SACKVILLE WEST.

Telegram, Frelinghuysen to Lowell, dated November 6, 1884

Telegram Washington, Nov. 6, 1884.

Lowell—Minister—London.

President expresses hope that extradition treaty may be signed before Congress meets December. What prospect of Parliament acting on new law this session?

FRELINGHUYSEN.

Dispatch No. 894, Lowell to Frelinghuysen, dated November 11, 1884

No. 894 Legation of the United States
London, November 11th, 1884.

Honourable
F. T. Frelinghuysen
Secretary of State

Sir—

Referring to your telegrams of the 16th September and of the 8th instant—copies of which I herewith enclose, I have the honour to acquaint you that, before receiving them, I had several times spoken to members of the Government of the importance of securing legislation as early as possible to bring the British Municipal Law into accordance with the terms of the proposed Extradition Treaty. While Mr. Adee was still here the fact had been thoroughly brought home to the Officials of the Home and Foreign Offices. From the members of the Government to whom I spoke I always received the same answer that they feared it would be impossible to do anything at this exceptional Session because the Ministry were solemnly pledged to confine the work of it to the Bill enlarging the Franchise.

When I received your telegram of the evening of the 8th I at once wrote to Sir William Harcourt asking if he would give me an interview after morning service next day. He replied that he would, and I accordingly went to his house at one o'clock and had a conversation with him, reading to him a part of your telegram and enforcing the wishes of the President to the best of my ability. He made the same answer I had already received, namely, that it would be impossible considering their pledges to introduce "contentious legislation"—But he promised to see Mr. Gladstone and give me a definitive answer on the morrow—Returning home I wrote a private note to Mr. Gladstone urging him in deference to the President's wishes, to strain a point, if necessary, in favour of prompt legislation. The next morning however Sir William left town for Cambridge in order to attend the funeral of the late Mr. Fawcett.

Hearing nothing from him I went over to the House of Commons in the afternoon of Monday the 10th and there awaited his return. He could not at the moment speak with Mr. Gladstone who was engaged in debate, but promised to do so later and let me know the result. This morning I received a note from him of which a copy is annexed and in which he repeats in other terms what he had said before.

On Tuesday the 11th I went to the Foreign Office and failing to find Lord Granville, saw the Under Secretary Sir Julian Pauncefote. He informed me that a copy of the draft Treaty with the changes proposed in your telegram of September 16th and the observations thereon of the Foreign Office had been sent to the Home Office for its consideration six weeks ago, but had not yet been returned. He promised to communicate with the Home Office again and at once upon the subject.

Yesterday I saw Lord Granville, who promised to do all in his power and to inform me at once if any change should take place in the views of the Government.

I may add that in answer to my note Mr. Gladstone expressed the warmest desire to further the wishes of the President should it be possible.

I have the honour to enclose herewith the copy of a telegram which I sent you in cipher on the 11th instant and I beg to say, in reference thereto, that the words "immediately after the receipt of draught of Treaty" were inadvertently used instead of "immediately after the receipt of '*Amendments*' to draught of Treaty."

I have the honour to be with great respect

Your obedient servant,

J. R. Lowell.

Enclosures:

Copy of telegram Mr. Frelinghuysen to Mr. Lowell September 16th, 1/894

Copy of telegram Mr. Frelinghuysen to Mr. Lowell November 8th 2/894

Copy of note Sir William Harcourt to Mr. Lowell November 11th 3/894

Copy of telegram Mr. Lowell to Mr. Frelinghuysen November 11th 4/894

Sept. 16, 1884 1/894

Translation

Lowell Minister.

Draft Extradition Treaty is in general acceptable with two omissions from schedule of offences and some verbal alterations: as follows:

Number 5. Embezzlement or larceny of Five Hundred Dollars or upwards in value.

Number 6. False pretences

and 7 fraudulent Bankruptcy to be omitted.

Number 22. Wilfully sending unseaworthy ships to sea:

Number 23. Omit last three words "or unlawfully obtained"

Article 13—Words "by all legal means within its power" render the obligation nugatory: provisional arrest is essentially extra-legal and while we have never hesitated to grant it, we do so at the risk of habeas-corpus proceedings.

Alter "to each Government like endeavor to procure provisional arrest" et cetera.

Article 15—Alter last three words "earliest in date" to "first received"

Article 17 lines 2 and 3 to read "foreign possessions of Her Britannic Majesty" over which Great Britain has sovereign jurisdiction.

Line 6. "Such foreign possessions"

Line 20. "Such foreign possessions as aforesaid"

Lines 23 and 28. Insert "such" before "foreign".

It has been suggested that the text of the Treaty should be proposed by Great Britain and accepted by us. Our people would more readily accept the innovations and especially destructive offences clause knowing that they had been proposed by us. On being informed that Her Majesty's Government is prepared to enter into such a Treaty

as has been considered by the two Governments I will with Mr. West sign the text as herein amended.

FRELINGHUYSEN.

2/894

Frelinghuysen
to Lowell
Minister—London

President expressed hope that Extradition treaty may be signed before Congress meets December What prospect of parliament acting on new law this session—

November 8, 1884

3/894
Private

Copy

Home Office
Nov. 11 84

Dear Mr. Lowell

I spoke to Mr. Gladstone last night on the question of legislation during the present Session with respect to Extradition so as to forward the arrangement on this subject with the United States.

Mr. Gladstone like myself is extremely anxious to do everything that is possible to expedite so desirable an end. But he wishes me to say in confirmation of what I have already told you that the Government feel themselves precluded from introducing in the present exceptional session measures which may prove however important to be of a contentious character.

It is to be feared that there must be parts of such a Bill which will meet with serious opposition and therefore it is one which cannot be attempted till the regular session of Parliament.

I very much regret this for all reasons and if anything should occur to alter this unfavorable aspect of the question you may rely on my doing my utmost to press forward the Bill.

Yours faithfully

(Signed) W. V. HARCOURT.

4/894

Translation of a cipher Telegram sent November 11th, 1884

Lowell to Frelinghuysen
Secretary

Washington

Immediately after the receipt of draft of Treaty I took it to the Foreign Office—am informed that Foreign Office sent it at once to Home Office—probably no serious difficulty with amendments. Only delay will be in passing Act of Parliament. Have been in communication with members of Government urging this. Prime Minister had pledged Government not to take up any contested business except Franchise Bill. They fear Irish members will oppose paragraph twenty four Article two of the Treaty. Will keep you informed.

Copy to Mr. Lowell Nov 18

Telegram Cipher

Legation of the U. S.
London, Nov. 11, 1884.

Frelinghuysen
Secretary
Washington.

Immediately after the receipt of your telegram I took it with draft of treaty to the Foreign Office. Am informed that Foreign Office sent it at once to the Home Office. Probably no serious difficulty with amendments, only delay will be in passing Act of Parliament. Have been in communication with members of Her Majesty's Government urging this. Prime Minister had pledged Government not to take up any contested except Franchise Bill. They fear Irish members will oppose paragraph twenty-four, Article two of treaty. Will keep you informed.

November eleventh.

LOWELL.

Dispatch No. 1026, Davis to Lowell, dated November 19, 1884

No. 1026. Department of State,
Washington, November 19, '84.

J. R. Lowell, Esq.
&c &c &c

Sir:

I have to enclose herewith for your information copies of telegrams exchanged between this Department and the Legation of the United States at London respecting the proposed Extradition Treaty.

I am, Sir, &c.

JOHN DAVIS,
Acting Secretary.

Enclosures:

Mr. Frelinghuysen to Mr. Lowell, Nov. 6
Mr. Lowell to Mr. Frelinghuysen, Nov. 11

Dispatch No. 1027, Frelinghuysen to Lowell, dated November 20, 1884

No. 1027. Department of State,
Washington, November 20, 1884.

J. R. Lowell, Esq.
&c &c &c

Sir:

I have to enclose herewith for your information a copy of a note of the 4th instant from Mr. West the British Minister here, respecting the expressions of Earl Granville in regard to the advantages derived in the settlement of the questions connected with the Extradition Treaty by the frank and able presentation of the subject by yourself and Mr. Adee.

I am, Sir,

Your obedient servant;

FRED'K. T. FRELINGHUYSEN.

Enclosure: Document mentioned.

Note, Frelinghuysen to unidentified person, dated November 20, 1884

Department of State,
Washington, Nov'r 20, 1884.

To the same.

Sir:

I have the honor to acknowledge the receipt of your note of the 4th instant respecting the expressions of Earl Granville in regard to the frank and able manner in which Mr. Lowell and Mr. Adee had discussed the questions connected with the proposed Extradition Treaty with Great Britain.

Accept, Sir, &c.

FRED'K T. FRELINGHUYSEN.

Dispatch No. 911, Lowell to Frelinghuysen, dated December 3, 1884

Confidential

No. 911. Legation of the United States
London December 3rd 1884

Sir,

Referring to my Number 894 of the 11th ultimo, I have the honour to acquaint you that I received a note from Lord Granville on the 1st instant requesting me to call at the Foreign Office yesterday at a quarter to 3 in the afternoon when he would give me the answer of his Government to our proposals respecting the Extradition Treaty. I accordingly attended at that time when he placed in my hands a Confidential Memorandum on the subject, a copy of which I enclose herewith. As this is a matter of great importance I shall send this Despatch by post tomorrow without waiting for the bag on Saturday.

I have the honour to be with great respect

Your obedient servant

J. R. LOWELL.

The Honourable
F. T. Frelinghuysen
Secretary of State
Washington. D. C.

ENCLOSURE

1/911

The copy of the memorandum above mentioned and accompanying document.

1/911
Memorandum.
Confidential

The observations and suggestions of the United States Government on the Draft Treaty of Extradition between Great Britain and the United States, which was communicated by Mr. Lowell in the month of September last, have been carefully considered by Her Majesty's Government, and the following remarks are submitted in reply.

ARTICLE II (5)

[*Embezzlement or Larceny.*

Suggestion to limit to $500 or upwards in value.]

To limit embezzlement to offences of $500 or £100 or upwards in value would be practically to nullify the Treaty as regards this offence.

The amount of defalcation capable of proof is no measure of the actual sum lost. In most cases detection comes from the discovery of small sums having been misappropriated, and though, perhaps, thousands have been embezzled, two or three cases of a few pounds are all that can be proved at the time.

Her Majesty's Govt. are therefore strongly of opinion that, so far as embezzlement is concerned, the proposed restriction as to the amount is inexpedient.

They have however, no objection to the proposal to limit larceny as an extradition crime to cases where the property stolen amounts to $500 or £100 and upwards.

The British are right in this suggestion.
Make Embezzlement say 5 without limitation.
Larceny $500 limit 6
Separate them.
I think that is really the Sec's idea.

ARTICLE II (6)

[*Obtaining money or goods by false pretences.*

Suggestions to omit.]

Her Majesty's Government would have preferred the retention of this offence, but will not object to its omission if pressed. They would, however, suggest that it should be retained but qualified by a limitation to $500 or £100 as proposed for larceny.

ARTICLE II (7)

[*Crimes by bankrupts against bankruptcy law.*

Suggestion to omit.]

This offence is considered by Her Majesty's Govt. to be a most important one in view of the large commercial transactions of the two countries; and they are of opinion that it would be most unwise to omit it.

On this point the message of the President of the United States to the House of Representatives on the subject of an Extradition Treaty with Great Britain, dated May 12 1884, 48th Congress, 1st Session, Ex. Doc. No. 156, is worthy of attention: for, towards the end, and with reference to the list of crimes, the message contains the following passage—"The bulk of the representations made to this Department in favour of an enlargement of the list have urged that fraudulent bankruptcy and embezzlement should be especially named."

Her Majesty's Government earnestly hope therefore that the United States Government will not insist on this offence being excluded from the list of crimes.

ARTICLE II (22)

[*Sending unseaworthy ships to sea.*

Suggestion to insert the word "wilfully".]

Her Majesty's Govt. would prefer the word "knowingly" to the word "wilfully" but they offer no objection to the insertion of the latter word.

ARTICLE II (23)

[*Receiving*

Suggestion to omit the words "or unlawfully obtained"]

Her Majesty's Government will not object to the proposed omission though they are of opinion that it would be better to leave the words as they stand.

ARTICLE XIII.

[*Arrest on Telegraphic request.*

Suggestion to substitute the word "will" for the words "shall by all legal means within its power".]

Her Majesty's Government agree to this suggestion.

ARTICLE XV.

[*Concurrent claims.*

Suggestion to substitute the words "first received" for "earliest in date."]

Her Majesty's Government agree to this suggestion.

ARTICLE XVII.

[*Application to British Colonies*

Proposed insertion of the words "over which Great Britain has sovereign jurisdiction" at the end of first paragraph.]

The reason for the proposed insertion is not understood as the Queen has sovereign jurisdiction over all the Colonies and Foreign possessions of Her Majesty.

Before giving a definite reply on this point Her Majesty's Government would be glad to learn the reasons for which the proposal has been made by the United States Government.

The foregoing remarks apply to the alterations proposed by the United States Government in the Draft articles as informally arranged with Mr. Adee. Her Majesty's Government on their side desire to propose the following emendations.

(d) ARTICLE I.

Her Majesty's Government desire to omit the words "such persons being actually within such jurisdiction when the crime or offence was committed".

The reasons for this suggestion will be gathered from the case of Regina v. Nillius reported in the Law Journal Reports (Part 10, October 1884, Vol. 53, New Series, page 157), a copy of which is annexed.

[*This enclosure deposited in the Library of the Department of State.*]

Nillius being in Southampton wrote and sent certain letters containing alleged false pretences to certain persons carrying on business in the German Empire, thereby inducing them to part with certain goods and deliver them to his order to certain persons in Hamburg.

Nillius was surrendered to Germany under the Extradition Treaty on the ground that though at the time he was residing in Great Britain, the offence was committed in Germany.

(b) Her Majesty's Government desire the addition at the end of Article VIII of the words "or by a duly authenticated copy thereof."

With regard to the other points alluded to by Mr. Lowell when communicating the amendments proposed by the United States Government in the Draft Articles, it may be stated that Her Majesty's Government have no objection to the formal proposal for the conclusion of the

Treaty coming from the side of the United States Government, but that whilst earnestly desiring that the terms of the Treaty should be speedily and satisfactorily settled, Her Majesty's Government cannot enter into any formal engagement before the passing of the new British Extradition Act.

With regard to the passing of the Act in question Her Majesty's Government greatly regret that they are unable to introduce the Bill into Parliament during the present Autumn Session; but they will spare no endeavours to insure its passing as soon as possible thereafter.

Foreign Office.
November 29, 1884.

Dispatch No. 1040, Frelinghuysen to Lowell, dated December 10, 1884

No. 1040. Department of State,
Washington, Dec. 10, 1884.

James R. Lowell, Esq.
&c. &c. &c.

Sir:

The Department has learned with regret, from your despatch No. 894 of the 11th ultimo, of the apparently insurmountable delay in the action of Parliament in relation to the legislation necessary to prepare the way for a new treaty for the extradition of criminals between this country and Great Britain.

I am, Sir, &c.

FRED'K T. FRELINGHUYSEN.

Note from West to Adee, dated January 5, 1885

Mem. returned

(Department of State. Received. Jan 6 1885)
5 Jan'y /85

Dear Mr. Adee,

I conclude you have examined the mem: which was informally communicated to Mr. Lowell on the 2nd Dec. I do not think it presents any difficulties. I send you now conf'y Carlisle's mem: containing suggestions which however need not be submitted to H. M. Gov'n. unless we

should be of opinion they would make the draft more complete.

Yours very truly,

L. S. SACKVILLE WEST.

Telegrams between Phelps and Bayard, dated June 25, 1885, July 2, 1885, July 3, 1885

Telegram Cipher.

Legation of the U. S.
London, June 25, 1885.

Bayard
Secretary
Washington

Shall I press extradition treaty upon the new ministry?

PHELPS.

Cipher Telegram. Washington, July 2, 85.

Phelps—
Minister—London.

Is proposed new extradition Act pending in Parliament, or does Ministry await answer to amendments proposed by Granville December third before introducing bill.

BAYARD.

Cr. Telegram. Washington, July 3, '85.

Phelps—
Minister—London.

Lord Granville's proposed amendments of December third will have consideration, whereupon you will be instructed.

BAYARD.

Third Assistant Secretary
Ans'd by telegraph
AAA
July 3, 1885

Telegram. Cipher.

Legation of the U. S.
London, July 3, 1885.

Bayard
Secretary
Washington

Bill not introduced. If passed this session it must be introduced immediately. Details of treaty should be first settled. I await instructions.

PHELPS.

Despatch No. 73, containing instructions from Bayard to Edward J. Phelps, dated August 4, 1885

No. 73. Department of State,

Confidential. Washington, August 4, 1885.

Edward J. Phelps, Esq.
&c. &c. &c.

Sir:

In a despatch, No. 911, of the 3rd of last December, Mr. Lowell transmitted to this Department a confidential memorandum which had been handed to him by Earl Granville, containing certain proposed amendments to the tentative draft of an Extradition treaty between the United States and Great Britain, which was under consideration last autumn.

I have examined the suggested amendments, and find that while some of them commend themselves to my favourable consideration, others could not be so accepted.

In addition to the observations contained in His Lordship's memorandum, I have been favoured by Mr. West with an informal paper on the phraseology of the draft treaty, which had been furnished at his request by Mr. Calderon Carlisle, Counsel of the British Legation in this city. This paper suggests several verbal emendations which I am disposed to accept. I send you a copy of Mr. Carlisle's paper for your information, and without assuming that it represents, or will be found to represent, the views of Her Majesty's Government, will treat its sug-

gestions in this instruction, so that a comprehensive view may be presented of the modifications to which I could consent in the text of the draft treaty.

Taking up the text of the draft treaty *seriatim*, so far as alterations have been suggested, I reach the following results:

(1.) Article I. The proposal of Lord Granville, contained in the memorandum above referred to, to omit from Article I the words "Such persons being actually within such jurisdiction when the crime or offense was committed" is concurred in. His Lordship referred in support of this proposal to the case of Regina vs. Nillius, reported in the Law Journal Reports. (Part 10, October 1884, Vol. 53, new Series, page 157). Besides omitting from Article I the words quoted, I think that it would be advisable to insert in Article III of the draft a clause providing that in the case of concurrent jurisdiction over persons charged with crime, neither Government shall be required to grant extradition for an offense of which, in the shape it takes in the demand made, it has jurisdiction. I take the prevalent theory and rule of the law to be, that the *locus* of the act is the place of its consummation, and that consequently the courts of that place have jurisdiction; and there are many precedents to the effect that the place of the consummation of a crime has at least concurrent jurisdiction with the place of its inception. The great increase of facilities for the execution in one place of crimes concocted in another place, makes the maintenance of such concurrent jurisdiction of great importance to the effective suppression of crime. The United States are deeply interested in the maintenance of this position, because of their exposure to assaults from neighboring territory.

(2.) *Article II, item 5.* As you will find to be the case upon an examination of the correspondence relating to the subject of this instruction, it has been proposed on the part of the United States to make this item read: "Embezzlement or larceny of five hundred dollars or upward in value." Lord Granville objected to this money limit as regards embezzlement, but was disposed to accept it in the case of larceny. In view of the substantial similarity between the two crimes and the fact that in England and in several of the United States embezzlement is made larceny by statute, I fail to see the utility or expediency of fixing a different money limit as regards one of the crimes from that which shall be determined for the other. In my judgment, fifty dollars or ten pounds would be a proper mini-

mum limit for both. In other extradition treaties of the United States, no money limit is assigned to embezzlement, but it seems to me advisable in a definition which classes larceny with embezzlement, to set a small minimum limit, such as that suggested.

(3.) *Article II, item 6.* "Obtaining money or goods by false pretences." I think that the same reasons which make it advisable to assign a money limit to larceny and embezzlement are equally applicable to this item. I therefore recommend that it be made to read:

"Obtaining by false pretences, money or goods of the value of fifty dollars, or ten pounds, and upwards."

(4.) *Article II, item 7.* "Crimes by bankrupts against bankruptcy law."

I am constrained to maintain the ground, already taken by this Government adversely to this item. As you are aware, this country has at present no general bankruptcy law, and the insolvent laws of the different states are so entirely devoid of uniformity that regularity in proceedings of demand and surrender would be next to impossible. In the present state of the law, therefore, the above item is unacceptable to this Government.

(5.) *Article II, item 17.* "Threats, by letter or otherwise, with intent to extort." In my judgment, it would be advisable to strike this item out.

(6.) *Article II, item 19.* "Sinking or destroying a vessel at sea, or attempting to do so." It is suggested in the memorandum of Mr. Carlisle that the word "wrongfully" should be inserted in this item before the words "sinking or destroying." This suggestion I accept.

(7.) *Article II, item 22.* "Sending unseaworthy ships to sea." It was proposed by this Government to insert "willfully" before "sending." Her Majesty's Government suggested the substitution of "knowingly" for "wilfully." I accept the suggestion.

(8.) Article II, item 23. It was proposed by this Government to omit from this item the words "or unlawfully obtained." Her Majesty's Government did not object to the proposed omission, although of the opinion that it would be better to let the words stand. It is suggested in the memorandum of Mr. Carlisle that the word "feloniously" be omitted. On the whole, it is my opinion that it would be better to strike out entirely the words "feloniously stolen or unlawfully obtained," and insert in lieu there-

of the words "obtained from the owner by larceny, false pretences, or embezzlement." This change necessitates another. As a minimum money-limit has been assigned to "larceny and embezzlement" and to "obtaining money or goods by false pretences," it seems manifest that the same limit should be imposed in the case of knowingly receiving the property obtained by those crimes. This suggestion may be made effective by inserting after the words, "or other property" the words "of the value of fifty dollars, or ten pounds and upwards." The item thus modified would read:

"(23.)—[New No. 21] Receiving any chattel, money, valuable security, or other property, of the value of fifty dollars, or ten pounds, and upwards, knowing the same to have been obtained from the owner by larceny, false pretences, or embezzlement."

(9.) *Article III.* In the first clause of this article I deem it desirable to substitute for the words "discharged or punished" the words "acquitted or convicted" for the words "under trial" the words "held for trial," and before "crime" to insert the word "same."

In the second clause, I deem it advisable to substitute for the words "under examination" the words "in custody, held for trial, or under sentence or arrest," and for the words at the end of the clause, beginning with "until the conclusion of the trial" &c., the words "until he shall have been lawfully discharged; Provided that the delay thus occasioned shall not in any case prevent ultimate extradition."

These changes, as you will perceive, are made mainly in accordance with the suggestions contained in Mr. Carlisle's memorandum.

As has been above shown, in considering Article I, I would also suggest the addition to the article of a clause to the following effect:

"Neither government shall be required to grant extradition for an offense of which, as it is stated or described in the demand for extradition, it has jurisdiction."

After the modifications and amendments suggested above shall have been made, the article will read:

Article III:

"If the person claimed on the part of the Government of Great Britain or the person claimed on the part of the Government of the United States of America, has already been tried and acquitted or convicted, or be still held for

trial, in the United States of America, or in Great Britain, respectively, for the same crime, for which his extradition is demanded, his extradition shall not take place.

"If the person claimed on the part of the Government of Great Britain, or if the person claimed on the part of the Government of the United States of America, should be in custody, held for trial, or under sentence or arrest for any other crime in the United States of America, or in Great Britain, respectively, his extradition shall be deferred, until he shall have been lawfully discharged: Provided that the delay thus occasioned shall not in any case prevent ultimate extradition.

"Neither government shall be required to grant extradition for an offence of which, as it is stated or described in the demand for extradition, it has jurisdiction."

(10.) *Article IV.* It is suggested in the memorandum of Mr. Carlisle that after the words "conviction thereon" an insertion be made of the words "and previously to the receipt, by the State applied to, of the demand for extradition." This suggestion meets my approval. The article thus modified will read:

"Article IV.

"The extradition shall not take place, if, subsequently to the commission of the crime, or the institution of the penal prosecution, or the conviction thereon, and previously to the receipt, by the State applied to, of the demand for extradition, exemption from prosecution or punishment have been acquired by lapse of time, according to the laws of the State applied to."

(11.) *Article VII.* It is advisable in my judgment, to add to the second clause the following:

"An indictment against the accused found by a Court having jurisdiction will afford a sufficient *prima facie* case to sustain the demand for extradition, subject to rebuttal by proof of alibi, or of the non-identity of the defendant, or of want of jurisdiction."

The third clause may be amended by striking out the words "by the sentence of condemnation passed against the convicted person by the competent court," and substituting therefor the words "by a duly authenticated copy of the record of his conviction by a competent court."

(12.) *Article IX.* Add to the first clause the words, "if he shall not have been already arrested under the provisions of Article XIII, or of any municipal statute."

(13.) *Article XI.* Instead of the word "sentences" (found in each clause and which might mislead both British and American lawyers) this article should read, as suggested in the memorandum of Mr. Carlisle, "certificates, or judicial documents showing the fact of conviction."

(14.) *Article XIII.* Her Majesty's Government agreed, in the memorandum of Lord Granville, to the suggestion of this Government that the word "will" be substituted in this article for the words "shall by all legal means within its power." Thus modified the article appears to be satisfactory to both sides.

(15.) *Article XV.* The substitution, at the suggestion of this Government, of the words "first received" for "earliest in date" has also been accepted by Lord Granville.

(16.) *Article XVII.* Referring to the proposition made by this Government to add the words "over which Great Britain has Sovereign jurisdiction" at the end of the first paragraph, Lord Granville's memorandum says: "The reason for the proposed insertion is not understood as the Queen has Sovereign jurisdiction over all the Colonies and Foreign possessions of Her Majesty"; and adds: "Before giving a definite reply on this point Her Majesty's Government would be glad to learn the reasons for which the proposal has been made by the United States Government."

The addition was suggested simply on the score of clearness and precision. The word "foreign" which qualifies "possessions," qualifies also the idea of Sovereignty. "Foreign possessions" might be held to mean settlements, trading stations, and even protectorates where Great Britain exercises a degree of administrative control short of actual sovereignty. I am not sure, however, but that the omission of the word "foreign" wherever it occurs in this Article as qualifying "possessions" or "possession," would better subserve the same intent. If so, no other modification of the article as it stands in the draft treaty would be necessary.

I enclose herewith printed copies of the draft treaty, amended in conformity with the views herein set forth. You will transmit a copy of this instruction and of the printed draft, to Her Majesty's Government, saying that while I regret the delay which has occurred in the consideration of a new Extradition Act by Parliament, and quite appreciate the force of Lord Granville's statement that "Her Majesty's Government cannot enter into any

formal engagement before the passing of the new British Extradition Act," I am nevertheless desirous that the terms of the treaty should be speedily and satisfactorily settled; and will lend my best endeavors toward the adoption of a text in advance.

I am Sir &c.

T. F. BAYARD.

Enclosures:

1. Printed draft of extradition treaty.
2. Informal memorandum of Mr. Carlisle, received from Mr. West, dated December 20, 1884.

AMENDED DRAFT. [CONFIDENTIAL]

Aug. 4, 1885.

DRAFT OF AN EXTRADITION TREATY BETWEEN THE UNITED STATES OF AMERICA AND HER BRITANNIC MAJESTY.

The President of the United States of America, and Her Majesty, the Queen of the United Kingdom of Great Britain and Ireland, having judged it expedient, with a view to the better administration of justice and to the prevention of crime within the two countries and their jurisdictions, that persons charged with or convicted of the crimes or offences hereinafter enumerated, and being fugitives from justice, should, under certain circumstances, be reciprocally delivered up; they have named as their Plenipotentiaries to conclude a Treaty for this purpose, that is to say:

The President of the United States of America,

And Her Majesty, the Queen of the United Kingdom of Great Britain and Ireland,

Who, after having communicated to each other their respective full powers, found in good and due form, have agreed upon and concluded the following Articles:

ARTICLE I.

The High Contracting Parties engage to deliver up to each other, under the circumstances and conditions stated in the present Treaty, all persons who, being accused or convicted of a crime or offence committed in the jurisdiction of the one Party, shall be found within the jurisdiction of the other Party.

ARTICLE II.

The crimes for which the extradition is to be granted are the following:—

1. Murder, and assault with intent to commit murder.
2. Manslaughter.
3. Counterfeiting or altering money, uttering or bringing into circulation counterfeit or altered money.
4. Forgery, or counterfeiting or altering; or uttering what is forged, or counterfeited, or altered.
5. Embezzlement, or larceny of the value of fifty dollars, or ten pounds, and upwards.
6. Obtaining by false pretences, money or goods of the value of fifty dollars, or ten pounds, and upwards.
7. Fraud by a bailee, banker, agent, factor, trustee, or director, or member or officer of any company, made criminal by any law for the time being in force.
8. Perjury or subornation of perjury.
9. Rape.
10. Abduction.
11. Child-stealing.
12. Kidnapping.
13. Burglary, or housebreaking.
14. Arson.
15. Robbery.
16. Piracy by law of nations.
17. Wrongfully sinking or destroying a vessel at sea, or attempting to do so.
18. Assaults on board a ship on the high seas, with intent to destroy life, or to do grievous bodily harm.
19. Revolt, or conspiracy to revolt, by two or more persons on board a ship on the high seas, against the authority of the master.
20. Knowingly sending unseaworthy ships to sea.
21. Receiving any chattel, money, valuable security, or other property, of the value of fifty dollars, or ten pounds, and upwards, knowing the same to have been obtained from the owner by larceny, false pretences, or embezzlement.
22. Malicious destruction of, or the attempt to destroy, railways or trains, vessels, bridges, public edifices, or dwellings, when the act endangers human life.

The extradition is also to take place for participation in any of the aforesaid crimes, provided such participation be punishable by the laws of both Contracting Parties.

ARTICLE III.

If the person claimed on the part of the Government of Great Britain, or the person claimed on the part of the Government of the United States of America, have already been tried and acquitted or convicted, or be still held for trial, in the United States of America, or in Great Britain, respectively, for the same crime for which his extradition is demanded, his extradition shall not take place.

If the person claimed on the part of the Government of Great Britain, or if the person claimed on the part of the Government of the United States of America, should be in custody, held for trial, or under sentence or arrest for any other crime in the United States of America, or in Great Britain, respectively, his extradition shall be deferred until he shall have been lawfully discharged: Provided that the delay thus occasioned shall not in any case prevent ultimate extradition.

Neither Government shall be required to grant extradition for an offence of which, as it is stated or described in the demand for extradition, it has jurisdiction.

ARTICLE IV.

The extradition shall not take place if, subsequently to the commission of the crime, or the institution of the penal prosecution, or the conviction thereon, and previously to the receipt, by the State applied to, of the demand for extradition, exemption from prosecution or punishment have been acquired by lapse of time, according to the laws of the State applied to.

ARTICLE V.

A fugitive criminal shall not be surrendered if the offence in respect of which his surrender is demanded be one of a political character, or if he prove that the requisition for his surrender has in fact been made with a view to try or punish him for an offence of a political character.

If any question shall arise as to whether a case comes within the provisions of this Article, the decision of the authorities of the Government in whose jurisdiction the fugitive shall be at the time shall be final.

ARTICLE VI.

No person surrendered by either of the High Contracting Parties to the other shall be triable or tried, or be punished for any political crime or offence, or for any act connected therewith, committed previously to his extradition.

ARTICLE VII.

A fugitive criminal, surrendered by or to either of the Contracting Parties for trial for the crime or offence named in the extradition warrant, may be tried for any other of the crimes or offences, committed prior to his extradition, enumerated in Article II: Provided that, in order that the Government that shall have made the surrender may be assured that the provisions of the Treaty are not about to be violated, or that it may remonstrate against the person so surrendered being held for such further trial if, in its opinion, they are about to be violated, notice of not less than sixty days shall be given to such Government of the intention to try such surrendered fugitive criminal for such enumerated crime or offence, with such specification of such crime or offence charged, as shall identify it to be among the crimes or offences enumerated in Article II.

No person surrendered by or to either of the Contracting Parties shall be triable or be tried for any crime or offence committed prior to his extradition, other than the offences enumerated in Article II, until he shall have had an opportunity of returning to the country from which he was surrendered. An interval of sixty days between his being set at liberty in respect of the charge on which his surrender had been made, and his arrest upon any other charge, shall be sufficient evidence of such opportunity.

ARTICLE VIII.

The requisition for extradition shall be made through the Diplomatic Agents of the High Contracting Parties, respectively.

The requisition for the extradition of an accused person must be accompanied by a warrant of arrest (or duly authenticated copy thereof), issued by the competent authority of the State requiring the extradition, and by such evidence as, according to the laws of the place where the accused is found, would justify his arrest if the crime had been committed there. An indictment against the accused found by a court having jurisdiction will afford a sufficient *prima facie* case to sustain the demand for extradition, sub-

ject to rebuttal by proof of alibi, or of the non-identity of the defendant, or of want of jurisdiction.

If the requisition relate to a person already convicted, it must be accompanied by a duly authenticated copy of the record of his conviction by a competent court of the State that makes the requisition for extradition.

ARTICLE IX.

If the requisition for extradition be in accordance with the foregoing stipulations, the competent authorities of the State applied to shall proceed to the arrest of the fugitive, if he shall not have been already arrested under the provisions of Article XIII, or of any municipal statute.

The prisoner is then to be brought before a competent magistrate, who is to examine him and to conduct the preliminary investigation of the case, just as if the apprehension had taken place for a crime committed in the same country.

ARTICLE X.

The extradition shall not take place before the expiration of fifteen days from the committal, and then only if the evidence be found sufficient, according to the laws of the State applied to, either to justify the committal of the prisoner for trial, in case the crime had been committed in the territory of the said State, or to prove that the prisoner is the identical person convicted by the Courts of the State which makes the requisition.

If, however, the prisoner shall have expressed to the magistrate his desire to be surrendered without delay, the extradition may take place immediately.

ARTICLE XI.

In the examinations which they have to make in accordance with the stipulations of this Treaty, the authorities of the United States shall admit in evidence the sworn depositions or statements of witnesses taken in Great Britain, or copies thereof, and likewise the warrants there issued and the certificates or judicial documents showing the fact of conviction, or copies thereof, provided such documents purport to be signed or certified by a judge, magistrate, or officer of Great Britain, and are authenticated by the oath of some witness, or by being sealed with the official seal of the Minister of Justice, or some other Minister of State of Great Britain, and by being certified

in the form of Schedule A hereto annexed, of which seal and certificate judicial notice shall be taken without proof.

And in the examinations which they have to make in accordance with the stipulations of this Treaty, the authorities of Great Britain shall admit in evidence the sworn depositions or statements of witnesses taken in the United States, or copies thereof, and likewise the warrants there issued and the certificates or judicial documents showing the fact of conviction, or copies thereof, provided such documents purport to be signed or certified by a Judge, magistrate, or officer of the United States, or of any State or Territory of the United States, and are authenticated by the oath of some witness, or by being sealed with the official seal of the Minister of Justice, or some other Minister of State of the United States, of which seal judicial notice shall be taken without proof.

ARTICLE XII.

If sufficient evidence for the extradition be not produced within two months from the date of the apprehension of the fugitive, he shall be set at liberty, unless sufficient cause be shown to the contrary.

ARTICLE XIII.

On being informed by telegraph, through the diplomatic channel, that a warrant has been issued by competent authority for the arrest of a fugitive criminal charged with any of the crimes enumerated in Article II of this Treaty, and on being assured from the same source that a requisition for the surrender of such criminal is about to be made, accompanied by such warrant and duly authenticated depositions, or copies thereof, in support of the charge, each Government will endeavor to procure the provisional arrest of such criminal, and keep him in safe custody for a reasonable time, not exceeding sixty days, to await the production of the documents upon which the claim for extradition is founded.

ARTICLE XIV.

All articles seized which were in the possession of the person to be surrendered at the time of his apprehension, whether being the proceeds of the crime or offence charged, or being material as evidence in making proof of the crime or offence, shall, so far as practicable and if the competent authority of the State applied to for the extradition has ordered the delivery thereof, be given up when the extra-

dition takes place. Nevertheless, the rights of third parties with regard to the articles aforesaid shall be duly respected.

ARTICLE XV.

If the individual claimed by one of the two High Contracting Parties in pursuance of the present Treaty should also be claimed by one or several other Powers on account of crimes or offences committed within their respective jurisdictions, his extradition shall be granted to that State whose demand is first received.

ARTICLE XVI.

Article X of the Treaty between Great Britain and the United States of America, signed on the ninth day of August, 1842, shall be canceled from and after the day on which the Treaty signed this day shall come into operation, after having been ratified by the High Contracting Parties, except as to any proceedings that may have already been taken or commenced in virtue thereof. And except as to such offenses as are enumerated in the said Article X of the said Treaty of 1842, the present Treaty shall not apply to crimes or offenses committed prior to the date of the present Treaty coming into force in the manner provided in Article XVIII.

ARTICLE XVII.

The stipulations of the present Treaty shall be applicable to the Colonies and possessions of Her Britannic Majesty.

The requisition for the surrender of a fugitive criminal who has taken refuge in any of such Colonies or possessions shall be made to the Governor or Chief Authority of such Colony or possession by the Chief Consular Officer of the United States of America in such Colony or possession.

Such requisitions may be disposed of, subject always, as nearly as may be, to the provisions of this Treaty, by the said Governor or Chief Authority, who, however, shall be at liberty either to grant the surrender or to refer the matter to his Government.

Her Britannic Majesty shall, however, be at liberty to make special arrangements in the British Colonies and possessions for the surrender of fugitive criminals from the United States, who may take refuge within such Colonies and possessions, on the basis, as nearly as may be, of the provisions of the present Treaty.

Requisitions for the surrender of a fugitive criminal emanating from any Colony or possession of her Britannic Majesty shall be governed by the rules laid down in the preceding Articles of the present Treaty.

ARTICLE XVIII.

The present Treaty shall come into force ten days after its publication in conformity with the forms prescribed by the laws of the High Contracting Parties. It may be terminated by either of the High Contracting Parties, but shall remain in force for six months after notice has been given for its termination.

The Treaty shall be ratified, and the ratifications shall be exchanged at as soon as possible.

IN WITNESS WHEREOF the respective Plenipotentiaries have signed the same, and have affixed thereto the seal of their arms.

Done at , the day of , 188 .

Draft of treaty headed "Counter Draft" and apparently bearing the date 1885

[CONFIDENTIAL.]

COUNTER DRAFT.

Draft of an Extradition Treaty between Her Majesty and the United States of America.

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, and the President of the United States of America, having judged it expedient, with a view to the better administration of justice and to the prevention of crime within the two countries and their jurisdictions, that persons charged with or convicted of the crimes hereinafter enumerated, and being fugitives from justice, should, under certain circumstances, be reciprocally delivered up; they have named as their Plenipotentiaries to conclude a Treaty for this purpose, that is to say:

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, and the President of the United States of America,

Who, after having communicated to each other their respective full powers, found in good and due form, have agreed upon and concluded the following Articles:—

ARTICLE I.

The High Contfacting Parties engage to deliver up to each other, under the circumstances and conditions stated in the present Treaty, all persons who, being accused or convicted of a crime or offence committed in the jurisdiction of the one Party, shall be found within the jurisdiction of the other Party.

ARTICLE II.

The crimes for which the extradition is to be granted are the following:—

(1.) Murder, and assault with intent to commit murder.
(2.) Manslaughter.
(3.) Counterfeiting or altering money, uttering or bringing into circulation counterfeit or altered money.
(4.) Forgery or counterfeiting or altering; or uttering what is forged or counterfeited or altered.
(5.) Embezzlement or larceny of the value of fifty dollars, or ten pounds, and upwards.
(6.) Obtaining money or goods **of the value of fifty dollars, or ten pounds, and upwards,** by false pretences.
(7.) Fraud by a bailee, banker, agent, factor, trustee, or director, or member or officer of any company, made criminal by any law for the time being in force.
(8.) Perjury or subornation of perjury.
(9.) Rape.
(10.) Abduction.
(11.) Child-stealing.
(12.) Kidnapping.
(13.) Burglary, or housebreaking.
(14.) Arson.
(15.) Robbery.
(16.) Piracy by law of nations.
(17.) Wrongfully sinking or destroying a vessel at sea, or attempting to do so.
(18.) Assault on board a ship on the high seas, with intent to destroy life, or to do grievous bodily harm.
(19.) Revolt, or conspiracy to revolt, by two or more persons on board a ship on the high seas, against the authority of the master.

(20.) Knowingly sending unseaworthy ships to sea.

(21.) Receiving any chattel, money, valuable security, or other property **of the value of fifty dollars, or ten pounds and upwards**, knowing the same to have been obtained from the owner by larceny, false pretences, or embezzlement.

(22.) Malicious destruction of, or the attempt to destroy, railways or trains, vessels, bridges, public edifices, or dwellings, when the act endangers human life.

The extradition is also to take place for participation in any of the aforesaid crimes, provided such participation be punishable by the laws of both Contracting Parties.

ARTICLE III.

If the person claimed on the part of the Government of Great Britain, or the person claimed on the part of the Government of the United States of America, have already been tried and acquitted or convicted, or be still held for trial, in the United States of America, or in Great Britain, respectively, for the same crime for which his extradition is demanded, his extradition shall not take place.

If the person claimed on the part of the Government of Great Britain, or if the person claimed on the part of the Government of the United States of America, should be in custody, held for trial, or under sentence or arrest for any other crime in the United States of America, or in Great Britain, respectively, his extradition shall be deferred until ~~until~~ he shall have been lawfully discharged: Provided that the delay thus occasioned shall not in any case prevent ultimate extradition.

Neither Government shall be required to grant extradition for an offence of which, as it is stated or described in the demand for extradition, it has jurisdiction.

ARTICLE IV.

The extradition shall not take place if, subsequently to the commission of the crime, or the institution of the penal prosecution, or the conviction thereon, and previously to the receipt, by the State applied to, of the demand for extradition, exemption from prosecution or punishment have been acquired by lapse of time, according to the laws of the State applied to.

ARTICLE V.

A fugitive criminal shall not be surrendered if the offence in respect of which his surrender is demanded be one of a political character, or if he prove that the requisition for his surrender has in fact been made with a view to try or punish him for an offence of a political character.

If any question shall arise as to whether a case comes within the provisions of this Article, the decision of the authorities of the Government in whose jurisdiction the fugitive shall be at the time shall be final.

ARTICLE VI.

No person surrendered by either of the High Contracting Parties to the other shall be triable or tried, or be punished for any political crime or offence, or for any act connected therewith, committed previously to his extradition.

ARTICLE VII.

A fugitive criminal, surrendered by or to either of the Contracting Parties for trial for the crime or offence named in the extradition warrant, may be tried for any other of the crimes or offences, committed prior to his extradition, enumerated in Article II: Provided that, in order that the Government that shall have made the surrender may be assured that the provisions of the Treaty are not about to be violated, or that it may remonstrate against the person so surrendered being held for such further trial if, in its opinion, they are about to be violated, notice of not less than sixty days shall be given to such Government of the intention to try such surrendered fugitive criminal for such enumerated crime or offence, with such specification of such crime or offence charged, as shall identify it to be among the crimes or offences enumerated in Article II.

No person surrendered by or to either of the Contracting Parties shall be triable or be tried for any crime or offence committed prior to this extradition, other than the offences enumerated in Article II, until he shall have had an opportunity of returning to the country from which he was surrendered. An interval of sixty days between his being set at liberty in respect of the charge on which his surrender had been made, and his arrest upon any other charge, shall be sufficient evidence of such opportunity.

ARTICLE VIII.

The requisition for extradition shall be made through the Diplomatic Agents of the High Contracting Parties, respectively.

The requisition for the extradition of an accused person must be accompanied by a warrant of arrest (or duly authenticated copy thereof), issued by the competent authority of the State requiring the extradition, and by such evidence as, according to the laws of the place where the accused is found, would justify his arrest if the crime had been committed there. An indictment against the accused found by a court having jurisdiction will afford a sufficient *prima facie* case to sustain the demand for extradition, subject to rebuttal by proof of alibi, or of the non-identity of the defendant, or of want of jurisdiction.

If the requisition relate to a person already convicted, it must be accompanied by a duly authenticated copy of the record of his conviction by a competent court of the State that makes the requisition for extradition.

ARTICLE IX.

If the requisition for extradition be in accordance with the foregoing stipulations, the competent authorities of the State applied to shall proceed to the arrest of the fugitive, if he shall not have been already arrested under the provisions of Article XIII, or of any municipal statute.

The prisoner is then to be brought before a competent magistrate, who is to examine him and to conduct the preliminary investigation of the case, just as if the apprehension had taken place for a crime committed in the same country.

ARTICLE X.

The extradition shall not take place before the expiration of fifteen days from the committal, and then only if the evidence be found sufficient, according to the laws of the State applied to, either to justify the committal of the prisoner for trial, in case the crime had been committed in the territory of the said State, or to prove that the prisoner is the identical person convicted by the Courts of the State which makes the requisition.

If, however, the prisoner shall have expressed to the magistrate his desire to be surrendered without delay, the extradition may take place immediately.

ARTICLE XI.

In the examinations which they have to make in accordance with the stipulations of this Treaty, the authorities of the United States shall admit in evidence the sworn depositions or statements of witnesses taken in Great Britain, or copies thereof, and likewise the warrants there issued and the certificates or judicial documents showing the fact of conviction, or copies thereof, provided such documents purport to be signed or certified by a Judge, Magistrate, or officer of Great Britain, and are authenticated by the oath of some witness, or by being sealed with the official seal of the Minister of Justice, or some other Minister of State of Great Britain, and by being certified in the form of Schedule A hereto annexed, of which seal and certificate judicial notice shall be taken without proof.

And in the examinations which they have to make in accordance with the stipulations of this Treaty, the authorities of Great Britain shall admit in evidence the sworn depositions or statements of witnesses taken in the United States, or copies thereof, and likewise the warrants there issued and the certificates or judicial documents showing the fact of conviction, or copies thereof, provided such documents purport to be signed or certified by a Judge, Magistrate or officer of the United States, or of any State or territory of the United States, and are authenticated by the oath of some witness, or by being sealed with the official seal of the Minister of Justice, or some other Minister of State of the United States, of which seal judicial notice shall be taken without proof.

ARTICLE XII.

If sufficient evidence for the extradition be not produced within two months from the date of the apprehension of the fugitive, he shall be set at liberty, unless sufficient cause be shown to the contrary.

ARTICLE XIII.

On being informed by telegraph, through the diplomatic channel, that a warrant has been issued by competent authority for the arrest of a fugitive criminal charged with any of the crimes enumerated in Article II of this Treaty, and on being assured from the same source that a requisition for the surrender of such criminal is about to be made, accompanied by such warrant and duly authenticated depositions, or copies thereof, in support of the charge, each Government will endeavor to procure the provisional arrest

of such criminal, and keep him in safe custody for a reasonable time, not exceeding sixty days, to await the production of the documents upon which the claim for extradition is founded.

ARTICLE XIV.

All articles seized which were in the possession of the person to be surrendered at the time of his apprehension, whether being the proceeds of the crime or offence charged, or being material as evidence in making proof of the crime or offence, shall, so far as practicable and if the competent authority of the State applied to for the extradition has ordered the delivery thereof, be given up when the extradition takes place. Nevertheless, the rights of third parties with regard to the articles aforesaid shall be duly respected.

ARTICLE XV.

If the individual claimed by one of the two High Contracting Parties in pursuance of the present Treaty should also be claimed by one or several other Powers on account of crimes or offences committed within their respective jurisdictions, his extradition shall be granted to that state whose demand is first received.

ARTICLE XVI.

Article X of the Treaty between Great Britain and the United States of America, signed on the 9th day of August, 1842, shall be cancelled from and after the day on which the Treaty signed this day shall come into operation, after having been ratified by the High Contracting Parties, except as to any proceedings that may have already been taken or commenced in virtue thereof. And except as to such offences as are enumerated in the said Article X of the said Treaty of 1842, the present Treaty shall not apply to crimes or offences committed prior to the date of the present Treaty coming into force in the manner provided in Article XVIII.

ARTICLE XVII.

The stipulations of the present Treaty shall be applicable to the Colonies and possessions of Her Britannic Majesty.

The requisition for the surrender of a fugitive criminal who has taken refuge in any of such Colonies or possessions shall be made to the Governor or Chief Authority of such Colony or possession by the Chief Consular Officer

of the United States of America in such Colony or possession.

Such requisitions may be disposed of, subject always, as nearly as may be, to the provisions of this Treaty, by the said Governor or Chief Authority, who, however, shall be at liberty either to grant the surrender, or to refer the matter to his Government.

Her Britannic Majesty shall, however, be at liberty to make special arrangements in the British Colonies and possessions for the surrender of fugitive criminals from the United States, who may take refuge within such Colonies and possessions, on the basis, as nearly as may be, of the provisions of the present Treaty.

Requisitions for the surrender of a fugitive criminal emanating from any Colony or possession of Her Britannic Majesty shall be governed by the rules laid down in the preceding Articles of the present Treaty.

ARTICLE XVIII.

The present Treaty shall come into force ten days after its publication in conformity with the forms prescribed by the laws of the High Contracting Parties. It may be terminated by either of the High Contracting Parties, but shall remain in force for six months after notice has been given for its termination.

The Treaty shall be ratified and the ratifications shall be exchanged at as soon as possible.

In witness whereof the respective Plenipotentiaries have signed the same, and have affixed thereto the seal of their arms.

Done at , the day of , 188 .

Despatch No. 143 from Phelps to Bayard, dated November 23, 1885

No. 143. Legation of the United States
London November 23d 1885.

(Printed Foreign Relations 1888)

The Honorable
Thomas F. Bayard,
Secretary of State
&c. &c. &c.
Washington

Sir,

Referring to your Despatch No. 73 of August 4th, 1885, touching the proposed Extradition Treaty between

the United States and Great Britain, I have the honour to say that I have recently had an interview with Lord Salisbury for the purpose of renewing the negotiations on the subject. And I have in the meantime been engaged in a careful examination of the draft of the Treaty transmitted to me from the Secretary of State with the Despatch No. 73, and of the instructions that accompanied it.

There appear to me to be objections to some of the provisions proposed in this draft, as well as to some of those that seem to have been agreed on in the negotiations that took place under the administrations of former Secretaries of State. And I feel it my duty respectfully to suggest these objections for the consideration of the Department before taking definite ground with the British Foreign Office in respect to the provisions to which they apply.

I. Article II of the draft referred to, enumerates the crimes for which extradition is to be granted. Among them is included *No. 6* "Obtaining by false pretences moneys or goods of the value of fifty dollars, or ten pounds and upwards."

I would suggest that this offence be omitted from the Article.

1. It is not, so far as I am aware, included in any of the numerous Extradition Treaties existing between the United States and other nations. I can perceive no special reason for its insertion in a Treaty with Great Britain.

2. It is a crime that is very difficult of the exact definition that ought to apply to all extradition crimes. It receives different definitions in different jurisdictions. And is likely to give rise to vexatious and doubtful questions on the point whether the facts relied on are really criminal or only fraudulent.

It is created by Statutes that vary widely in different States. The British Extradition Act of 33 & 34 Victoria which applies to all existing Extradition Treaties of that country, provides that this crime among others, "is to be construed according to the law existing in England, or in a British possession," (as the case may be) "at the date of the alleged crime, whether by common law, or by Statute made before or after the passing of this Act." In respect to an offence of which the character

may differ so materially under the provisions of different Statutes, it would not be satisfactory to the United States Government, nor would it be just, that Extradition should take place in cases made criminal by English Law, and not in those made criminal by American Law. Yet if resort is had to American Law to define a crime that depends altogether upon Statute provisions for its existence, to the Statutes of what State among the thirty-eight is it to be made? There is no United States Statute on the subject. If it be said that upon an application by the United States for extradition, the law of the State in which the offence was committed shall govern, which law is to govern where the application is made by Great Britain? If such a case is to be determined by the law of the State in which the arrest is made and the hearing is had, then a man may be liable to extradition if arrested in one State but not if arrested in another.

3. This offence though sometimes punished as felony, by Statute, is usually not above the grade of a misdemeanour. Aggravated cases may of course occur. But the general average of cases do not amount to felony. It seems to me that any crime less than felony is below the dignity of an Extradition treaty, or of International proceedings.

4. The claim of extradition for this offence is one very likely to be abused to answer private purposes.

The charge is frequently resorted to by creditors as a means of obtaining payment from insolvents for goods sold on credit. Of course the credit is granted under the belief that the debtor is solvent. But little straining of the facts is necessary in many cases, to establish a plausible claim that such belief was induced by the fraudulent representations or practices of the buyer. Most Courts of Justice are familiar with cases of this description.

It is certainly most undesirable that an extradition Treaty should offer opportunity for such enterprises.

II. The same observations apply with increased force to so much of clause 21 in Article II as includes the offence of "receiving any chattel, money, valuable security or other property of the value of fifty dollars

or ten pounds and upwards, knowing the same to have been obtained from the owner by * * * false pretences."

I am not aware that any such offence is known in criminal law. It may perhaps be created in some States by Statute. But I think it is not known in most States. It could, in no event, be more than a misdemeanour. The difficulty of defining the crime of obtaining by false pretences and the liability to abuse of the charge, is much increased, when it is thus attempted to be carried to the second degree.

Of course the latter offence should be omitted from the Treaty if the former is.

And I think it should be omitted even if the former is included.

It is also to be remarked in respect of both these offences, that they are of the same class, and stand upon very analogous ground with that of "fraudulent bankruptcy," which the British Government have proposed to include in the Treaty, and which the State Department has instructed me, (in my judgment most wisely) to object to. I think the objections to the inclusion of that offence are much weakened when these are introduced, and much strengthened by their exclusion. Because all I have said, in respect of these crimes is equally applicable to that of fraudulent bankruptcy.

III. Article II also includes in the list of extradition crimes the offences.—

No 10 "ABDUCTION."
No 12 "KIDNAPPING."

I suggest the omission of these offences. The objections to their insertion are similar to those already stated in respect to the offences previously considered.

1. What is legally understood by "Kidnapping" or "Abduction" it is very difficult to state.

   These terms have no recognized common law definition and vary very widely under different Statutes, in respect to the facts on which they depend. In the criminal law of some States they are probably unknown.

2. Unless in extreme cases, they must be classed, when the offence is made out, as misdemeanours only.

3. They are charges commonly made in the progress of private controversies among litigants. The term "Kidnapping" is most frequently applied to arrests that are claimed to be illegal. That of "abduction" is often used as substantially equivalent to seduction. And quite as often refers to the efforts of parties in divorce suits to obtain from each other possession of children in contempt of judicial orders.

4. The United States has no other treaty of Extradition in which either of these crimes is included.

   Except that in the Treaties with Mexico and Peru, "kidnapping" is made an extradition offence, defined in their language as "the taking and carrying away of a person" (or "a free person") "by force or deception"—a definition that would embrace almost any case of actionable false imprisonment.

5. Finally it is to be observed that the crime of "child-stealing," that would include many of the most aggravated cases of "abduction" and "kidnapping" is also included in the Treaty.

IV. Article II concludes with these words: "The Extradition is also to take place for *participation* in any of the aforesaid crimes, provided such participation be punishable by the laws of both Contracting Parties."

1. The term participation seemed to me to be obscure. It is not a legal term as describing a criminal offence. In case of misdemeanours, if such are to be included, no participation is criminal short of the commission of the offence itself.

   In cases of felony there may be accessories as well as principals. If the participation in the crime, without being a principal amounts to being accessory, it should be so described. If it does not, it is not criminal.

2. The phrase "laws of both Contracting Parties", seems also obscure.

   The Contracting Party on the American side is described in the treaty as being the United States of America. The United States statutes create but few of the offences included in the treaty. The laws of the thirty eight States differ widely from each other as to some of these offences.

What law is intended?

And if the law of any State in aid of which extradition is demanded, is intended, what law controls when the extradition is demanded by Great Britain?

3. I think it may be safely assumed that by the laws of Great Britain and of all the States, the being accessory to a felony is punishable. And that neither Government would seek to excuse itself from the extradition of an accessory, upon the ground that under its laws the being accessory to a felony is not a crime. And I presume that only crimes of the grade of felony are intended to be included in the treaty.

Would not the purpose of this clause be better answered by adding to the list of crimes the following:

"23 The being accessory to any of the crimes" (or any of the "felonies") specified in this Article."

V. Article III concluded with this clause: "neither Government shall be required to grant extradition for an offence of which, as it is stated or described in the demand for extradition, it has jurisdiction." This clause is not contained in the British draft, but is proposed by the United States. A previous clause of the same Article provides that if the person claimed for extradition "have already been tried and acquitted or convicted, or be still held for trial in the United States or in Great Britain respectively for the same crime for which his extradition has been demanded, his extradition shall not take place." The question then arises, whether if the country from which the person is claimed has not tried him, and does not propose to try him for the crime, the mere fact that it has jurisdiction to try him, should exempt him from extradition.

I think it should not.

There are many cases in which while the legal jurisdiction to try may be in both countries, the proof necessary to convict is only in one. Rarely can such proof be found in both. There is no means of compelling the attendance of witnesses from a foreign country, nor can their testimony taken abroad be used in a criminal case. In all such instances, there must necessarily be a failure of justice, if there can be no extradition.

Nor is it infrequent that local or political sympathy prevents any attempt at a prosecution in one jurisdiction, for a crime that in the other would be promptly punished.

It would seem to be but just that a country in which a criminal from another country takes refuge, where both have jurisdiction to try him, should either try or surrender him, if the offence is within the Treaty, and his extradition is demanded.

If in such case he be not actually held for trial where the claim for extradition is made, a prosecution could still be instituted, instead of granting the extradition, if the authorities should find such course advisable.

VI. Article VII provides as follows:

"A fugitive criminal surrendered by or to either of the Contracting Parties for trial for the offence named in the Extradition Warrant, may be tried for any other of the crimes or offences committed prior to his extradition enumerated in Article II. Provided," &c.

I earnestly advise that Article VII be stricken out.

No nation ever agreed to an Extradition Treaty under which a criminal should be surrendered upon the mere demand of another nation, unaccompanied by *prima facie* evidence of guilt, and without examination of the case by the judicial authorities of the nation on which the demand is made. A proposition for such a treaty would be universally scouted. Yet that is precisely the result of the provision in this Article, in respect to any case to which it applies.

The proposed treaty contains in its Article II a long list of crimes for which extradition may be granted, varying widely in magnitude, and having no relation to each other.

A proper case for extradition may be made in respect to any one of these crimes, perhaps a minor one, and after due examination before the Court or upon habeas corpus, as to the probable foundation for the charge, the alleged criminal is surrendered. Instead of bringing him to trial on the charge for which he is extradited, he is indicted and tried for an altogether different offence, concerning which no evidence has been offered to the nation which surrendered him, and no examination before its courts has taken place. The man may thus be brought to trial for a crime for which

his extradition never could have been obtained, if it had been demanded.

Another consideration adds greatly to the force of this suggestion. Articles V and VI contain very stringent provisions that no extradition shall take place for any political offence, and no trial for such an offence where extradition has been had for another offence. These provisions necessarily assume that some of the crimes included in the treaty, and for which extradition may be claimed under it, may turn out to be political offences. Whether they are so or not, in any given case, is a point on which a wide difference of opinion and a heated state of feeling may, not improbably, occur. It is easy to see that such cases are not unlikely to arise hereafter between Great Britain and the United States. If in such an instance extradition of a man should be obtained for one crime and he should then be proceeded against for another, claimed in the country from which he was surrendered, to be political, and not admitted to be such in that by which he is demanded, very disagreeable complications might arise.

Article V of the Treaty expressly provides that whenever a question arises whether an alleged offence is political or not, "the decision of the Authorities of the Government in whose jurisdiction the fugitive shall be at the time, *shall be final.*" But the provisions of Article VII ~~if included~~, transfers the decision of this question from the Government surrendering the fugitive, to the Government to whom he is surrendered, in all cases to which this Article applies—that is, whenever the extradition is for one offence, and the trial is sought to be had for another.

The further proviso in the Article that time shall be afforded for "remonstrance" in such case by the Government which has surrendered the fugitive, does not appear to me to meet the difficulty. Such a Government has the right and ought to reserve it, to decide the question for itself, before making the surrender:—Not to make the surrender and afterwards remonstrate against the consequences. In the heat and pressure engendered by the particular case, and especially under an inflamed state of ~~of~~ public feeling, may not be found the favourable occasion for the consideration of remonstrances, or the harmonizing of conflicting views,

What may easily be agreed on in a treaty, in the abstract, might be found very difficult to adjust in the concrete case.

On the other hand, I can see no reason for the inclusion of this provision. It is certainly but just and fair to require the Government which asks the extradition of a fugitive, to specify the offences, and all the offences, for which it is proposed to try him. Good faith and fair dealing would seem to demand it. That is the sure way to avoid dispute. The case must be rare indeed, if any, in which this can not be done.

No other treaty of the United States, so far as I know, contains such a provision. The English Extradition Act (33 & 34 Vict.) is directly to the contrary.

I do think this Article would endanger the ratification of the treaty in the Senate as well as the legislation in Congress and in Parliament necessary to carry it into effect.

If Article VII should be retained in the Treaty, I respectfully suggest the omission from it of these words now contained in the draft:—"in order that the Government that shall have made the surrender may be assured that the provisions of the treaty are not about to be violated, or that it may remonstrate against the person so surrendered being held for such further trial, if in its opinion they are about to be violated."

It seems to me hardly to consist with the dignity of either Government to anticipate in the terms of the treaty that a violation of it may be looked for, or needs to be provided against. Should it not be assumed that whatever the treaty stipulates will be carried out in good faith?

The sixty days notice of the intention to try the fugitive for a different offence from that for which he was extradited being provided for, which affords the opportunity for remonstrance upon any grounds deemed material, it would seem unnecessary to suggest the reasons that may induce the remonstrance, or to state in terms why the opportunity is given.

VII. Article VIII contains the following clause. "An indictment against the accused found by a Court having jurisdiction will afford a *prima facie* case to sustain the demand for extradition, subject to rebuttal by proof of alibi, or of the non-identity of the defendant or of want of jurisdiction."

I would suggest upon this Article either

1. That the whole of this sentence be omitted, or
2. That the conclusion of it, commencing with the words "subject to rebuttal" &c., be stricken out.

1. If the whole clause above quoted be omitted, it will leave the law on the subject of the evidence necessary to sustain a claim for extradition where it now is, and as it has been administered by the Courts on both sides ever since an extradition treaty has existed between the countries.

I am not aware that any difficulty on this point has ever arisen.

Such would still remain the law, even if this clause is inserted, in cases where the claim for extradition is made before the finding of an indictment.

But if it be desired to make the finding of an indictment in a competent Court a sufficient ground for extradition without the production of any further evidence in support of the charge, I think it should be so provided without the added provision for a rebuttal by proof adduced for the defence.

If this cause is retained, the Court will be compelled to hear evidence from the respondent to sustain the defence of alibi or non-identity. If obliged to hear such evidence, it necessarily follows and is implied, that the decision must be according to the weight of the evidence. And that if the defence is made out upon the evidence before the Court, the respondent must be discharged.

The result is, that as the indictment which constitutes the case on which the claim for extradition is made, is found by a grand jury in one country, upon the *ex parte* testimony for the prosecution, the determination of the question whether that claim shall be allowed will be had in the Courts of the other country on the *ex parte* testimony for the defence.

If to avoid this consequence, evidence in support of the indictment must be furnished, then nothing would appear to be gained by making the indictment *prima facie* sufficient.

I think there is a very serious objection to imposing upon the Courts by an arbitrary rule, the necessity of hearing evidence from the respondent in support of such defences as alibi and non-identity. They are peculiarly questions that cannot be fairly tried in a foreign country, where prosecuting Counsel

cannot attend, evidence by witnesses cannot be produced, testimony for the defence cannot be rebutted, nor even cross-examination adequately conducted.

A trial has just terminated here, in which the evidence for the prisoner to support these defences of alibi and non-identity was such as, if it had been heard *ex parte*, must inevitably have resulted in his discharge. Yet he was convicted on the trial, by the establishment of his guilt beyond all question.

The present law on the subject leaves the whole matter to the sound discretion of the Courts: Evidence for the defence is not necessarily excluded nor necessarily received. The judge is left at liberty to determine on the whole case, how far he will or will not enter upon the trial of such questions.

I can see no reason why an indictment on which a respondent would be compelled to go to trial in the country where the offence occurred, should not be sufficient ground for a claim for extradition. Faith and credit enough for this should surely be accorded by each country to the judicial proceedings of the other.

But if this is not agreed to, then I should think it better to leave all cases on the same footing, and to require in all the measure of proof so well stated in the already existing treaty on this subject between the two Governments—"Such evidence of criminality as according to the laws of the place where the fugitive or person so charged shall be found, would justify his apprehension and commitment for trial, if the crime or offence had there been committed." Leaving it to the Courts to administer on this point the common law that has grown up by more than forty years experience, without hampering them by further enactments, or compelling them on the question whether a respondent shall be held for trial, to pass *ex parte* upon issues which only such a trial could properly determine.

The clause which allows proof to be offered of "want of jurisdiction" in the Court in which the indictment is found, is probably the result of an oversight. The Article previously requires that the indictment on which the claim for extradition is based, must be "found by a Court having jurisdiction." Such jurisdiction must therefore affirmatively appear.

I trust these observations—unavoidably lengthy, yet still much too brief to exhaust what might be said in support of them—will not be deemed out of place, or in any respect captious. They are the result of much and anxious consideration of the subject.

I beg to commend them to your consideration, more especially as I am aware that this unfinished treaty, of which the original draft was prepared by the British Government, was inherited by the present from a past Administration. And that time has been too short and engagements too pressing to admit of much examination of it since you took charge of the Department of State.

I need not add that whatever your conclusions may be, whether in accordance with my own views or not, my best exertions will be addressed to the effort to carry it into effect.

The foregoing suggestions are offered as applicable to the continued negotiation of a treaty substantially in conformity to the draft I have had the honour to receive.

I ask leave now to bring to your attention a proposal of a different character, as an intermediate and provisional measure.

A pressing necessity is undoubtedly felt by both Governments for an immediate extension of existing extradition arrangements so as to include certain offences that are becoming frequent, and that are much encouraged by the present facilities for escape.

If these offences were within the provisions of the treaty of 1842, now in force, probably no further treaty on the subject would be thought necessary.

It appears to me clear that the proposed draft now under consideration cannot by any exertion be matured, agreed to, and ratified, without very considerable further delay. Its consideration is constantly interrupted and put aside in England, by the many pressing and critical matters that are recurring, and are likely to recur, so rapidly. The treaty as drawn, is so elaborate in its provisions, really presenting a complete code of both law and procedure in the matter of extradition, that very numerous points of discussion are presented, all of which require to be carefully considered, and in respect of some of which a serious difference of opinion exists. The negotiation has already occupied nearly nine years, and the advances that have been made toward an agreement on the disputed points, are as yet very small.

After the treaty shall have been executed, it must still be ratified by the Senate. I cannot doubt that the criticisms already suggested, and, perhaps many others, will occur to members of that body, and may probably give rise to discussion and to grave differences of judgment.

Should the treaty be ratified, legislation must still be obtained from both Congress and Parliament, in order to carry it into effect. Reasons which need not be suggested make the present, as it seems to me, a singularly unpropitious time for attempting to deal with the subject in either of these bodies. Certain provisions of the treaty are almost sure to attract opposition in certain quarters. And the numerous points presented by so elaborate a system, offer great opportunities for attack.

It is further to be observed, that all this delay, past and prospective, arises upon topics that are altogether subordinate to the principal objects sought to be accomplished. So that while there has never been any dispute or hesitation between the two Governments in respect to these main and urgent points, the provision for them is indefinitely postponed, to the great detriment of public justice, by the discussion of minor questions that never would have arisen at all but for the opportunity afforded by the making of a new treaty.

Pressed by these considerations, I venture to suggest as an intermediate and altogether unobjectionable remedy, that it be proposed to the British Government, by a short article supplemental to the treaty of 1842, to extend its extradition provisions so as to comprehend the more important and material offences not already included in them.

And I beg leave to submit herewith for your examination a draft of such supplemental agreement.

For this method of treaty Stipulation, there are abundant precedents.

I thought it not improper in the interview with Lord Salisbury before mentioned, to ascertain informally, whether such a proposal, if made by my Government, would be acceptable to Her Majesty's Government. The suggestion was very promptly accepted by his Lordship, who quite concurred in the opinion that under the circumstances it is the most advisable course to adopt. Pointing out at the same time, that the execution of such an Article need not prevent the continuance of the effort to mature a more elaborate treaty, which when ratified, would by its terms annul and supersede both the extradition clauses of the present treaty and the proposed supplement.

I have every confidence therefore, that if you should think proper ~~to authorize~~ it, I can procure the immediate adoption of such a supplemental agreement.

There could not be, I think, any question of its prompt ratification by the Senate, as it does not change in any respect the existing law on the subject, and only adds to the number of extraditable offences already provided for, two or three which it is universally admitted should be included without delay.

No legislation whatever on the part of Congress would be necessary to carry this arrangement into effect. The existing laws being ample for that purpose, as will be seen by reference to the Act of Congress (Rev. Stat. Title LXVI).

And almost no legislation would be required from Parliament. An Act of a few lines, adding to the Schedule of Extradition offences now contained in the Acts of 33 & 34 Victoria, being all that would be needed.

The result would be, that the public interest has immediately the benefit of the most that is sought to be effected by a new treaty, without any prejudice to the effort to substitute, if thought desirable, one that might be more perfect in detail and subordinate provisions, when it can be deliberately and carefully perfected.

But I may perhaps take the liberty to add upon this point, that so far as my own opinion is concerned, I should much prefer a treaty expressed in the concise and general, yet clear and explicit terms in which this subject is dealt with in the Webster-Ashburton treaty of 1842, than such a draft as that proposed by the British Government, and which has so long been under unavailing consideration.

The difference between the two is strikingly illustrated by actual experience.

Under the treaty of 1842, now forty three years in force, no claim for extradition on either side, so far as I can learn, has failed of accomplishment in any proper case properly presented. No practical difficulty has been encountered by the Courts of either country in carrying the provisions of the treaty into effect. And no difference has occurred between the two Governments arising out of any case of extradition, except on the single question as to the right to extradite a fugitive for one offence and to try him for another. In short the treaty has completely and harmoniously answered its purpose. Surely this history does not disclose the necessity for any alteration of the existing law otherwise than to extend its provisions to certain offences which since the adoption of that treaty have become frequent and flagrant.

With France on the other hand, Great Britain has had during a part of the same period (from 1852 to 1866) an extradition Treaty of a most elaborate character very similar to the draft now proposed to us. But it remained a dead letter because the requisite legislation to carry it into effect could not be obtained from Parliament. Its numerous details raising so many questions and encountering so many objections that the Bill introduced for that purpose had to be abandoned.

After fourteen years had elapsed during which no surrender of a fugitive to France had been obtained, though many had been demanded, the treaty was terminated by notice from the French Government in accordance with its stipulations.

I am quite unable to perceive what is the advantage of encumbering a treaty of this character with rules of evidence, methods of procedure, and special conditions and limitations. If these are not enacted into the law of both countries, the treaty does not go into effect. If they are so enacted, then they need not be set forth in the treaty. If the treaty is in general terms, simply expressing the agreement, any Statute regulating extradition, on either side, not inconsistent with it, is sufficient to make the treaty operative. And can at any time be amended if found necessary. But if all these details are made a part of the treaty, then no legislation that does not exactly conform to it, is available. Thus, as I have pointed out, the British Extradition Act which has made the simple words of the American treaty completely effectual, has left the elaborate treaty with France incapable of any effect at all.

But even if it be assumed (as I think it cannot safely be assumed) that Acts of Congress and of Parliament can be obtained in precise conformity, with all the special provisions of the proposed draft, I must still believe that the form of the treaty now in force is much the more desirable. In a treaty, as in all other contracts, Courts of Justice will always find means to carry into effect clearly expressed intentions. But where an excess of caution adds to the expressed agreement special methods of procedure, and attempts to anticipate the various emergencies that may arise, cases otherwise easy of solution, are made to bristle with points for litigation.

Under the old treaty a system of legal administration has grown up, that is now understood by Courts, Counsel and Magistrates. If not altogether perfect it shares that defect with all other systems of law that have yet been devised. It has worked well enough for many years. Why

should we change it? It seems to me that only necessity can justify the alteration of well settled law. All judicial experience shows that the most promising theories of legal remedy are often the most unfortunate in practical results.

This point however, as I have remarked, does not require present determination. The immediate question is not whether the treaty of 1842 shall ultimately be superseded by a new one, but whether pending the consideration of that subject, which is likely to be protracted, the provisions of that treaty shall be extended to cover the existing necessity. Such an extension would not embarrass the negotiations of a further treaty.

And to that negotiation, if it be thought expedient, I shall contribute my best endeavour.

I have the honour to be, with great respect,

Your obedient servant,

E. J. PHELPS.

Enclosure

Draft of proposed Convention with accompanying Notes.

Telegram, Bayard to Phelps, dated February 20, 1886

Cipher Telegram. Washington, Feb'y 20, 1886.

Phelps

Minister—London.

The time is now propitious to conclude amendment to existing extradition treaty as proposed by you in your one forty-three. Your draft wholly acceptable to me.

BAYARD.

1/223.

Translation of Cipher telegram received at the Legation Feb. 20, 1886:—

Phelps, Minister, London.

The time is now propitious to conclude amendment to existing Extradition Treaty proposed by you in your One forty-three. Your draft wholly acceptable to me.

BAYARD.

Dispatch No. 223, Phelps to Bayard, dated February 23, 1886

No. 223. Legation of the United States,
London, February 23rd, 1886.

The Hon'ble Thos. F. Bayard,
Secretary of State,
&c., &c., &c.,
Washington.

Sir,

I have had the honour to receive your telegram of the 20th instant, relative to the proposed Extradition Treaty with Great Britain, whereof a copy is herewith enclosed.

I have this morning had an interview with Lord Rosebery on the subject, and have submitted to him a copy of the draft transmitted to you with my Despatch No. 143 of the 23rd November last.

I have every reason to hope that an agreement will very soon be reached.

Lord Rosebery suggested a doubt as to the expediency of including in the Convention Article III of the proposed draft, which provides that no extradition shall take place for a political offence. His suggestion was, that as the former treaty did not contain this proviso, its insertion now when only two offences are added of which only one (the destruction of buildings, trains, &c., by violence, whereby human life is endangered) could possibly be regarded as political, might be understood as a concession that dynamite outrages, such as have taken place in London, are capable of being considered political offences.

Of course the proviso is unnecessary. Because by the rule of international law which is universally admitted, and subject to which all extradition treaties exist, whether it is expressed in the treaty or not, no nation ever surrenders a person charged with a political offence.

Our present treaty with Great Britain on this subject has stood for forty-four years without such a proviso.

I shall be glad therefore to be instructed whether you deem it material to insist upon this Article if it should be seriously objected to.

My own view would be, that it is really immaterial whether it is inserted or not.

I have the honour to be, Sir,

Your obedient servant,

E. J. Phelps.

Enclosure.

1/223 Translation of Cipher telegram, Mr. Bayard to Mr. Phelps, Feb. 20th, 1886.

Dispatch No. 229, Bayard to Phelps, dated March 3, 1886

No. 229.

Department of State,
Washington, March 3, 1886.

Edward J. Phelps, Esq.
&c. &c. &c.

Sir:

My telegram of February 20 will have instructed you to proceed with the negotiation for a supplementary enlargement of the existing provision for extradition between the United States and Great Britain on the bases suggested in your No. 143 of the 23rd of November last.

At the time your despatch was received, early in December, the indications of the permanence of Lord Salisbury's administration, with which you had theretofore negotiated, were not favorable, and I hesitated to direct you to undertake a modified negotiation which might only be begun to be arrested or jeoparded by a political change.

The present moment, when the Government with whom the incomplete negotiations of 1883 were conducted has returned to power, seems to be propitious for initiating a simplified negotiation, which may be found free from some of the features that were alleged to have embarrassed Lord Granville in dealing with the subject.

It seems quite unnecessary to examine in detail the considerations you advance to show the unadvisability of continuing the negotiation on a line which would have necessarily involved notable changes in the legislation of Great Britain at least, if not also in that of the United States, before a treaty could have been signed. Whatever view may be entertained of the details of the project which passed into your hands in the shape it had reached after a decade of discussion in one direction only, the fact that changes of municipal law were an indispensable condition, is of itself a sufficient incentive to seek another way out of the question, without the need of surmounting so serious an obstacle.

Such a solution appears to me to be furnished by your suggestion that a remedy for the present unsatisfactory workings of the extradition stipulations of existing treaty, be sought by means of a brief supplement to Article X of the Treaty of 1842, extending its provisions so as to comprehend certain important and material offences not already comprised therein, and to surround it with additional safeguard against trials for political causes or

for other than the offence in respect of which extradition is asked and granted. The draft you submit to accomplish that result, is entirely acceptable to me.

Examining its provisions in detail and by articles, I offer a few remarks.

(Art. I.) The three additional crimes enumerated by you seem to be sufficient for all present practical purposes. Burglary might well be added, for it is undesirable that the facilities of asylum afforded by the long frontier between the United States and the Canadian Dominion should extend to the common crimes of violence as to which the facts may be readily established by evidence. But, like you, I am averse to the inclusion of constructive or statutory offenses, in the interpretation of which variance may exist under the laws of the two countries.

(Article II.) The practice is dissimilar in the United States and in Great Britain touching the restrospective effect of extradition treaties. Nearly all those concluded by Great Britain are expressly retroactive. With us, the contrary rule obtains. Art. X of the Treaty of 1842 is silent on this point, making it now necessary, to avoid conflict, that the one or the other rule should be distinctly laid down. I regard a non-retroactive provision as the safer.

(Art. III.) I think the provision for non-surrender for political offenses had best be included. Its omissions might raise question in the Senate.

(Art. IV.) I agree with you that this article, which stipulates for non-trial for any other crime than those specified in the "extradition warrant," until after the person surrendered has had an opportunity to quit the country, "might be well enough omitted" if the effect would be unquestionably to leave the rule as it now stands under the Treaty of 1842.

As you are aware, the disposition made of the question which arose between the two countries in 1875, rested on the practical admission of Her Majesty's Government, that the British Extradition Act of 1870 did not inject into the relations of the two Governments any obligations not found in treaties existing before that act was passed. Hence, the treaty of 1842 continued to be executed just as if the provision of the British Act, requiring as a condition precedent to surrender the guarantee of the receiving government that the party should not be tried for other than the surrender offence, did not exist. But, at the same time Great Britain notified us that no new arrangements of extradition

could be entered into which should not conform to this requirement of the act of 1870; and this it was that led to the late negotiation looking to an amendment of the British statute in the sense of the American claim.

If it be practicable for Her Majesty's Government to regard this phase of the question as not affected by the negotiation for an extension of the provisions of the existing treaty, that is, to treat the amendments as exclusively confined to their subject matter and in no way affecting the continuity of article X as to all its unamended provisions your draft article IV might better be omitted. Its inclusion might be misunderstood as a recession from the position taken by Mr. Fish in the disputed Lawrence and Winslow cases. Mr. Fish, however, merely held, and rightly, that this Government could not give a guarantee of non-trial which was neither required by treaty nor provided by municipal statute. It is a different thing to stipulate by treaty for the precise guarantee asked, and if it should be necessary to so stipulate, I see no objection—especially as some of our Courts and the majority of our best authorities on international law, hold, that a moral obligation exists forbidding trial for other than extraditable offences for which surrender is asked and granted.

If the draft Article IV be retained the words "the extradition warrant," may be excepted to as vague. Which warrant is intended, that of surrender, or that of reception whose purpose is to designate a lawful custodian for the prisoner during the homeward journey? The words of the British Act of 1870, Section 3, are that the individual is not to be surrendered except in view of a guarantee that he shall not "be detained or tried in that foreign state for any offence committed prior to his surrender other than *the extradition crime proved by the facts on which the surrender is grounded.*" Now what is this extradition crime?

In the Lawrence case in 1875, the fugitive was demanded in virtue of a dozen indictments, more or less, all for forgery, the proof thereof being submitted with the requisition, but he was surrendered on one indictment only; and Great Britain appeared to hold that the U. S. should guarantee his non-trial on any other than the very indictment upon which his surrender was granted. This appears to me to be, if it were seriously put forth, a narrower interpretation than the British act of 1870 fairly justifies.

It is the "extradition crime" (in Lawrence's case, forgery) and not the particular specification or form of indictment, that controls the surrender.

A crime may be complex, made up of allied criminal acts. To illustrate, one may break into an inhabited dwelling by night, violate a female inmate, murder her, and after plundering the dwelling set it on fire to conceal the several crimes. Here would be combined burglary, robbery, rape, murder and arson, five distinct crimes, four of which would be embraced in the proposed extradition arrangement with Great Britain. The evidence would necessarily cover the five phases of criminality and the demand for surrender may or may not, specify the four treaty offences. Although perhaps surrendered on one offence only, murder, let us say, the person surrendered may properly also stand his trial for burglary, robbery and arson, for in the language of the British Extradition Act they are the extradition crimes "proved by the facts on which the surrender is grounded." But the principle which treats this agglomeration of crimes as one general act would not properly link therewith a charge of forgery or embezzlement on some other and distinct occasion, any more than it could embrace a crime not made extraditable by the treaty. This would be our construction of the British Extradition Act. If by "the extradition warrant" of your draft Article IV is meant the warrant of surrender that phraseology would appear to uphold the narrower British construction, and therefore open to objection.

(Article VI.) This provision, touching the duration of the arrangement needs no comment.

With these considerations before you, I trust your negotiation will be simple and successful.

I am Sir &c.,

T. F. Bayard.

Telegram, Phelps to Bayard, dated June 25, 1886

(Department of State. Received Jun 25 1886.)

Telegram. Cipher.

Bayard, Secretary, Washington.

Legation of the United States, London, June 25, 1886.

Extradition treaty signed today and will go to you tomorrow in the despatch bag by the Aurania.

Phelps.

Dispatch No. 307 from Phelps to Bayard, dated June 26, 1886

(Printed Foreign Relations 1888)

No. 307.

Legation of the United States,
London, June 26th, 1886.

The Hon'ble
Thos. F. Bayard,
Secretary of State,
&c., &c., &c.,
Washington.

Sir,

I have the honour to transmit herewith the Convention signed by me on behalf of the United States, and by the Right Honourable the Earl of Rosebery, Minister of Foreign Affairs, on behalf of Her Majesty's Government, extending the provisions of the Xth Article of the Treaty of August 9th, 1842, between the United States and Great Britain, relative to the extradition of persons charged with crime.

I advised you by telegram of the 25th instant of the execution of this Convention.

It conforms in all substantial particulars so nearly to the form heretofore prepared by me, and submitted to the Department of State for consideration, and of which your approval was expressed, that I have not deemed it necessary or advisable to incur the delay, at this late period in the Session of Congress, of sending it to you for further examination before signing. And it has been impossible for me, under the existing condition of public business here, and the long discussion upon minor details that has taken place, to bring the matter to an earlier conclusion, though I have made every exertion to that end.

The Convention is so short, and its terms will, I hope, be found so perspicuous, that but little explanation seems to me requisite. Though to overcome the scruples of some of the officers of Her Majesty's Government, I have consented to add two or three clauses, which, though quite unobjectionable, are, in my judgment, unnecessary. But as the Convention as finally concluded is in all its material provisions in accordance with my own views as approved by you, I regarded those concessions as judicious.

I add a few suggestions on the various clauses.

1. It will be observed that the provisions for Extradition are extended to persons *convicted* of the crimes specified in the Treaty, as well as to those charged before trial

with the commission of them. This seems to me a very desirable addition. If those accused of crime should be surrendered in order to be tried and punished, much more should those actually convicted of the same crimes, but who have escaped punishment by flight, be sent back to undergo the sentence of the law.

2. But four additional crimes are added by this Convention to the seven specified in the Treaty of 1842. It is not intended to be asserted that there may not be other offences proper to be included in an Extradition treaty. These are the principal and most flagrant ones. A large class of crimes, justly punishable by law, are in my judgment, not only beneath the dignity of a treaty between nations, but having different definitions and degrees under different Statutes, are likely, if embraced in such a treaty, to be fruitful of controversy in its practical application. The attempt to enlarge the list of crimes encounters such a variety of conflicting claims on the one side and the other, as to render discussion almost endless and agreement extremely difficult. On my accession to office, I found pending between the two Governments a negotiation for a new Extradition treaty, which had been going on for nine years without much approximation toward a result. The discussion had been principally in regard to minor offences and details of procedure, unnecessary, in my judgment, to be included in a treaty, and likely to embarrass its operation. Meanwhile the constant escape of criminals in flagrant cases, in respect to which there could be no dispute, had become a scandal to both countries. I was very glad therefore to obtain your approval to the suggestion that these cases be at once provided for, by a simple extension of the existing treaty, leaving for after consideration the question whether a more elaborate one is desirable.

3. The restriction of the provisions of the Convention so far as the additional offences are concerned, to those which may be committed after the Convention comes into force, is one which is usual in treaties of this character. And whether important or not cannot, I think, be objectionable.

4. The provision that no surrender shall be made for a political offence is unnecessary because such is already the established and universal rule, to which all Extradition treaties are regarded as subject. But its insertion can do no harm, and the omission of it might excite comment.

5. The clause precluding the trial of a surrendered fugitive for any offence committed prior to his surrender, except that established by the facts on which his surrender was granted, until he shall have had a reasonable opportunity for return, has already received your assent. If anything needs to be said in its support, I refer to the elaborate discussion of the subject contained in my Despatch No. 143, under date of November 23rd, 1885. I regard this Clause not only as right in itself, and as in conformity with the true principles of international law on the subject, but as specially desirable to the United States.

It is further to be remarked, that without the insertion of it, or Statute Enactment to the same effect, no Extradition Treaty whatever could be made with Great Britain, because the Act of Parliament of 1870 directly prohibits the making of such a treaty with any nation, unless provision is made by that nation, against the trial of a surrendered person for a crime other than that on which his extradition was demanded. I do not think a repeal of this Act could be obtained from the British Parliament. It certainly could not at the present time. If therefore we were to insist upon the unnecessary, and in my judgment untenable and undesirable proposition, that a man should be extradited for one offence in order to try him for another, we should be unable to establish with Great Britain any extradition arrangements at all.

And I add that, in my opinion, if the objection arising upon the Act of Parliament should be seriously pressed in the Courts of Great Britain upon a demand for extradition under our existing treaty as it stands, without this Convention, and in the absence of any provision such as that contained in this Clause, a very serious question would arise whether any such extradition could be granted.

6. Article VII, is in my estimation quite unnecessary but altogether harmless. No extradition can ever take place, whatever the Stipulations of a treaty may be, except under and in conformity to existing legislation for carrying it into effect in the country where the surrender is sought. Omission to provide such legislation, or any Statute restrictions inconsistent with the provisions of the treaty, would amount simply to a refusal to carry out the treaty, or to a violation of its terms. This is not to be anticipated in a Contract between Sovereign Powers. But should it unhappily take place, the remedy is found in the provisions of this Convention copied from the Treaty of

1842, by which either party can terminate the Treaty by simply giving Notice to that effect.

This Clause therefore only formulated in terms the rule of law that would equally and unavoidably apply, though it were not expressed in the Convention.

It is expressly understood on both sides that the adoption of this Convention shall not stand in the way of the negotiation of a more elaborate treaty upon the subject, which shall supersede both this Convention and the Xth Article of the Treaty of 1842, if such a treaty shall, upon further consideration, be deemed advisable. My own judgment is decidedly against any such attempt, for reasons heretofore clearly presented to you. I think that the Treaty of 1842, supplemented by this Convention, and by the system of judicial construction and procedure which has grown up under it, in an administration of forty-four years, forms an Extradition arrangement that is not likely to be improved by attempting to recast it. But should your opinion be otherwise I shall address my best efforts to obtaining such other or further Treaty Stipulation as you may deem desirable.

I have the honour to be,

Sir,

Your obedient servant,

E. J. PHELPS.

ACCOMPANIMENT.

Convention as executed, June 25, 1886.

Whereas, by the 10th Article of the Treaty concluded between the United States of America and Her Britannic Majesty on the 9th day of August, 1842, provision is made for the Extradition of persons charged with certain crimes;

And whereas it is now desired by the High Contracting Parties that the provisions of the said article should embrace certain crimes not therein specified, and should extend to fugitives convicted of the crimes specified in the said Article and in this convention;

The said High Contracting Parties have appointed as their Plenipotentiaries to conclude a convention for this purpose, namely;

The President of the United States of America, Edward John Phelps, Envoy Extraordinary and Minister Plenipotentiary of the United States to the Court of St. James, &c., &c.,

And Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, the Right Honorable Archibald Philip, Earl of Rosebery, Her Majesty's Principal Secretary of State for Foreign Affairs, &c., &c.,

Who after having communicated to each other their respective Full Powers, found in good and due form, have agreed upon the following Articles:

ARTICLE I.

The provisions of the 10th Article of the said Treaty shall be and are hereby extended so as to apply to and comprehend the following additional crimes not mentioned in the said Article, namely;

1. Manslaughter.

2. Burglary.

3. Embezzlement or Larceny of the value of 50 dollars or £10 and upwards.

4. Malicious injuries to property whereby the life of any person shall be endangered, if such injuries constitute a crime according to the laws of both the High Contracting Parties.

And the Provisions of the said Article shall have the same effect with respect to the extradition of persons charged with any of the said crimes as if the same had been originally named and specified in the said article.

ARTICLE II.

The provisions of the 10th Article of the said Treaty, and of this convention shall apply to persons convicted of the crimes therein respectively named and specified, whose sentence therefor shall not have been executed.

In the case of a fugitive criminal alleged to have been convicted of the crime for which his surrender is asked, a copy of the record of the conviction and of the sentence of the Court before which such conviction took place, duly authenticated, shall be produced, together with evidence proving that the prisoner is the person to whom such sentence refers.

ARTICLE III.

This Convention shall not apply to any of the crimes herein named and specified which shall have been committed, or to any conviction which shall have been pronounced, prior to the date when the Convention shall come into force.

ARTICLE IV.

No fugitive criminal shall be surrendered under the provisions of the said Treaty, or of this Convention, if the crime in respect of which his surrender is demanded be one of a political character, or if he prove to the competent authority that the requisition for his surrender has in fact been made with the view to try or punish him for a crime of a political character.

ARTICLE V.

A fugitive criminal surrendered to either of the High Contracting Parties under the provisions of the said Treaty or of this Convention shall not, until he has had an opportunity of returning to the State by which he has been surrendered, be detained or tried for any crime committed prior to his surrender other than the extradition crime proved by the facts on which his surrender was granted.

ARTICLE VI.

The extradition of fugitives under the provisions of the said Treaty and of the present Convention shall be carried out in the United States and in Her Majesty's dominions respectively, subject to, and in conformity with, the laws regulating extradition for the time being in force in the surrendering State.

ARTICLE VII.

This Convention shall be ratified, and the ratifications shall be exchanged at London as soon as possible. It shall come into force ten days after its publication, in conformity with the forms prescribed by the laws of the High Contracting Parties, and shall continue in force until one or the other of the High Contracting Parties shall signify its wish to terminate it, and no longer.

In witness whereof the undersigned have signed the same and have affixed thereto their seals.

Done at London the twenty-fifth day of June, 1886.

(Seal) EDWARD JOHN PHELPS.

(Seal) ROSEBERY.

Despatch No. 349, Bayard to Phelps, dated July 7, 1886

No. 349.

Department of State,
Washington, July 7, 1886.

Edward J. Phelps, Esq.,
&c., &c., &c.

Sir:

The Convention, signed on the 25th ultimo, for extending the provisions of the treaty between the United States of America and Great Britain for the extradition of persons charged with crime, which accompanied your despatch No. 307 of the 26th ultimo, has been received and will be at once communicated to the Senate in Executive Session, with a view to its ratification.

I am, Sir &c.,

T. F. BAYARD.

Telegram, Phelps to Bayard, dated July 21, 1886

(Department of State Received Jul 21 1886)

TELEGRAM RECEIVED.

No.

From London
July 21 1886

Bayard,
Secretary,
Washington.

The text of extradition treaty and my despatch accompanying it, telegraphed from Philadelphia and published here this morning in Times. Should not Senate be informed.

PHELPS.

Despatch No. 679 from Phelps to Bayard, dated February 11, 1888

No. 679. Legation of the United States,
London, February 11, 1888.

The Honourable
Thomas F. Bayard,
Secretary of State,
&c., &c., &c.

Sir:

I have the honour to enclose herewith a series of cuttings from certain newspapers published here yesterday and today with reference to the postponement by the Senate until December next of further consideration of the new Extradition Treaty between the United States and this Country.

I venture to call your attention particularly to the New York telegram and to the leading article in yesterday's "Daily News" which is the leading opposition newspaper and supporter of Mr. Gladstone and his party.

I have the honour to be,
Sir,
Your obedient servant,
E. J. PHELPS.

1/679

THE DAILY NEWS,
FRIDAY, FEBRUARY 10, 1888.

Do ut Des.

A TELEGRAM from our New York Correspondent gives reason to fear that the new extradition treaty with the United States may prove a failure. It has been laid before the Senate at Washington in due course, but the Senate has decided to postpone deliberation upon it until December. The decision was reached by a strict party vote, the Republicans voting against the treaty, the Democrats in favour of it. This circumstance looks more than suspicious. According to their own showing the Republicans were thinking only of their country, and they were anxious to postpone ratification until Great Britain had exhibited a duly compliant frame of mind on the Fisheries question. The Fisheries question, however is not the especial concern of either party, and it is difficult to see why their solicitude on that

subject should have led the Republicans to vote all one way. The welfare of the Republican ticket in the forthcoming Presidential election would, on the contrary, be just the thing to unite them to a man; and the Republican ticket, it is said, at least whenever it bears the name of Mr. BLAINE, does not disdain the support of the dynamite faction. Perhaps Mr. BLAINE and his friends would fare just as well in the long run if they deigned to consider the treaty on its merits. The people of the United States ought by this time to know how to draw the distinction between political offenders and the miscreants who are the common enemies of civilization, more especially as the treaty, as drafted, draws it for them, with every possible guarantee against the abuses of power. Either motive of the Republican senators would be unworthy of them, and the motive alleged by themselves is only less unworthy than the one of which they are suspected. It is hardly the thing to carry the famous Bismarckian principle of barter into a transaction for bringing murderers to their doom.

THE DAILY NEWS,

THE EXTRADITION TREATY WITH AMERICA.

(FROM OUR CORRESPONDENT.)

NEW YORK, THURSDAY.

The postponement by the Senate till December of the Extradition Treaty with Great Britain was carried by the votes of the Republican Senators. They were nearly unanimous in favour of postponement, while the Democrats were nearly unanimous against. It is thought the action means the ultimate rejection of the treaty, but this is not certain. Undoubtedly the approaching Presidential election was the main influence behind the votes of the Republican Senators, they not desiring to offend the Dynamite faction of the Irish voters by ratifying the treaty. The *Tribune's* Washington Correspondent says: "The postponement is due to the determined opposition of the Republican Senators, whose opinion was that Mr. Phelps and Mr. Bayard had been tricked into signing a one-sided agreement, and who believed that this was a peculiarly unfortunate moment to choose for extending favours to Great Britain, and who considered it good policy to wait the outcome of the Fisheries negotiations before proceeding in this matter." The same Correspondent says that the Democratic Senators who voted for the confirmation "seemed to lose sight of the

claim for protection and sympathy which political offenders of Irish nationality have upon this country," and the quotation of these remarks reveals the real cause of the postponement, which was the Republican desire to hold the votes of the Irish dynamite faction, which, under the lead of the *Irish World*, were cast for Mr. Blaine for President in 1884. Commenting on the *Tribune's* remarks, the *Evening Post* says:—"As the 4th Article of the treaty exempts crimes of a political character, and as the interpretation of this phrase would lie with the courts of the country from which the surrender was demanded, it is hard to say what it was the Democrats lost sight of. The truth is, no political offenders except Dynamiters would have anything to fear from the treaty, as they come in under the head of malicious injury to property whereby the life of any person shall have been endangered. That there was some sort of relation established between them and the Republicans during Mr. Blaine's campaign, there is unhappily no reason to doubt. They were all his enthusiastic supporters, and the worst of them were received by and spoken of by Mr. Blaine in the most kindly terms."

Friday, Feb. 10/88.

THE EXTRADITION TREATY WITH AMERICA.

(FROM OUR CORRESPONDENT.)

NEW YORK, FRIDAY.

The postponement of the Extradition Treaty is warmly condemned by all the journals save those anxious for the support of the Dynamite Irish Vote. The *Times* calls the act a piece of political cowardice, and adds: "The public has not even been permitted to know the precise provisions of the Treaty which made skulking Senators afraid to talk about it in the light, or even to act upon it in the dark. In face of the approaching political canvass, it is safe to assume that some kind of proposal to include the barbarous crime of slaughtering people and destroying property, by excluding Dynamite for political purposes, was what made cowards of so many of them. It might be plain that a crime which under our own laws is treated as plain murder and punished with death, should be treated as an equally serious crime when committed in Great Britain, but so long as a considerable number of voters are uncivilized enough to insist that it is a political offence when Irishmen are guilty of it, our feeble politicians will be afraid to deal with it as anything else." The *Tribune* as Mr. Blaine's organ, and

the *Sun*, the Democratic organ, which opposed Mr. Cleveland in the interest of Mr. Blaine in 1884, rival each other in rejoicing over the postponement. The *Tribune* repeats its stereotyped charge, made against the Cleveland Administration on all occasions, that it is conducted in British rather than in American interests. It says that the Fishery negotiations may result in a fatal compromise or an unnecessary surrender of American rights, and adds: "The conduct of Mr. Secretary Bayard and the President, for whom he acts in respect of all questions involving the relations between Great Britain and the United States, has been such that extradition was from the first regarded with suspicion. That suspicion was perfectly natural, indeed inevitable. In the selection of Mr. Phelps and his subsequent behaviour, in the treatment of the Fishery question, in the obstinate refusal of the Administration to protect American interests by the retaliatory powers conferred by two successive Acts of Congress, in all the discussions of the tariff question, and especially in the President's latest avowal of the precise theories which constitute the British Economic Gospel, the President and the Secretary of State have wantonly disregarded American interests and served the interests of Great Britain. No treaty with Great Britain negotiated by such an Administration could have had perfectly unprejudiced consideration in any body composed of patriotic Americans." You can see from the Senate's action and the *Tribune's* comments how small will be the chance of favourable action by the Senate upon any solution of the Fishery question, which may be proposed by a Commission whose British member is so cordially detested by the Irish-Americans as Mr. Chamberlain is known to be.

Saturday, Feb 11/88.

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8. THE TIMES, SATURDAY, FEBRUARY 11, 1888.

SENATOR RIDDLEBERGER.

PHILADELPHIA, FEB. 10.

The postponement by the Senate of the consideration of the British-American Extradition Treaty, which means the virtual rejection of the arrangement, was due mainly to the peculiar tactics of Senator Riddleberger, of Virginia. A telegram sent from Washington to the *Philadelphia Public Ledger* says:—

"The Extradition Treaty with England has been laid aside indefinitely, because of the obstreperousness of a

Senator from Virginia. It was found that there was no other way to silence him. Not only was he continually violating the rules and making a scandal in the open session of the Senate by insisting upon the discussion of secret business with open doors, but when the doors were closed he would not permit any business to be transacted. Single-handed, alone, he filibustered till he wore out the patience of his colleagues. As soon as the executive session has been called to order during the last few days, ever since the treaty was reached, he has taken the floor, well fortified by internal stimulants, and has talked till some one in disgust moved to adjourn. Nominations could not be acted upon, and other business could not be transacted; all that remained for the other Senators to do was to listen to his incoherent harangues or leave the Chamber. He was sober enough always to keep on his legs and knew what he was doing; but his self-respect and dignity were drowned in rum.

"Yesterday, after he had been talking half an hour, some one arose and asked him how long he proposed to occupy the floor. He very promptly replied, 'Until this infamous treaty is for ever banished from this Chamber.' When he got too offensive he was called to order; and if he did not obey the chair the Serjeant-at-Arms was sent for. Finally, Senator Stewart, of Nevada, lost all patience, and moved to indefinitely postpone the further consideration of the treaty. This was what Mr. Riddleberger was working for. It was accomplished by a vote of 23 to 21, only a little more than half of the Senators being present.

"Mr. Riddleberger has been receiving congratulations from leading Irishmen in the town all day. He accomplished what they wanted. They do not care what means were used to bring it about. Among others who shook him warmly by the hand this afternoon were John Pope ~~Hadnot~~ **Hudnot** and Dennis Kearney. Both told him that he had done a glorious service for 'old Ireland.'"

Letter from Blaine to Sir Julian Pauncefote, dated November 19, 1889

Department of State,
Washington, November 19, 1889.

Sir Julian Pauncefote, G. C. M. G.; K. C. B.
&c. &c. &c.

My dear Sir Julian,

Referring to the extradition treaty signed by us last Summer, I think it desirable, as I have heretofore intimated

that the exchange of ratifications should take place in Washington at your earliest convenience. It is desirable that the treaty be signed in season to be communicated to the Senate with the annual Message of the President.

In view of the near approach of the date for the assembling of Congress, I shall be glad if you would cable Lord Salisbury, that the Government of the United States wishes to transmit the treaty to the Senate on its convening in December with the modification that the exchange of ratifications shall take place in Washington instead of London, so that if his reply be favorable, such modification may be made at once and delay in the transmission of the treaty to the Senate be avoided.

I am, &c.

JAMES G. BLAINE.

Note from Pauncefote to Blaine, dated November 22, 1889

(Department of State. Received Nov. 22, 1889.)

Confidential
File

British Legation.
Washington D. C.

22 November 1889

Dear Mr. Blaine,

Immediately on receipt of your Note of the 19th instant, I telegraphed its substance to Lord Salisbury whose reply has just arrived.

I have much pleasure in informing you that there is no objection on the part of Her Majesty's Government to the modification which you have proposed in the Extradition Treaty providing for the exchange of Ratifications in Washington instead of London.

I remain,

Dear Mr. Blaine

very truly yours

JULIAN PAUNCEFOTE.

Dispatch No. 162 from Lincoln to Blaine, dated January 29, 1890

No. 162

Legation of the United States
London, January 29, 1890

Sir,

I have the honour to enclose herewith, for your information two copies of a leading article which appeared in the "Times" newspaper with respect to the new Extradition Treaty between the United States and this country.

I have the honor to be, Sir,

Your obedient servant,

ROBERT T. LINCOLN.

The Hon'ble
James G. Blaine
Secretary of State

Enclosure:
Extract from Times as above 1/162

1/162

THE TIMES, TUESDAY, JANUARY 28, 1890.

The convention revising the law of extradition, of which we published the text yesterday, recently concluded between the Governments of the United Kingdom and the United States, marks a very decided advance in the practical development of international law. There are no two nations in the world which are more closely and more constantly connected. Yet, for various reasons—which cannot all be described as creditable either to ourselves or to our American kinsfolk—the right of extradition has, up to the conclusion of the present convention, been more narrowly limited between the United Kingdom and the United States than between any other two nations of corresponding rank. To prove that the convention of which Mr. BLAINE and SIR JULIAN PAUNCEFOTE have settled the terms is essential to the interests of both countries, it is scarcely necessary to say more than that the law as it stands is regulated by a Treaty nearly half a century old. The Treaty of 1842 was far ahead of the practice of nations at that time, but in process of years it has grown more than out of date. It is certain that it would long since have been amended and enlarged had not political jealousies intervened. SECRETARY BLAINE's letter to the PRESIDENT, which we print today, presents the question very fairly and very clearly.

It is worthy of observation that MR. BLAINE has not been remarkable for good will towards this country, and it may be assumed that arrangements which he has negotiated are at least as much for the advantage of the United States as for that of the United Kingdom. It is, however, needless to dwell upon the injury inflicted on the one or the other nation by the absence of a rational law of extradition. MR. BLAINE puts the matter as distinctly as can be desired from the point of view of an American statesman. The right of extradition, as between the United Kingdom and the United States, is restricted under the Treaty of 1842 to murder, assault with intent to commit murder, piracy, arson, robbery, forgery, and the utterance of forged paper. It is noticeable that every other Extradition Treaty which has been concluded by the Government of the United States, except that entered into in 1849 with the Hawaiian Islands, comprises a greater number of offences. "The insufficiency," says MR. BLAINE, "of such an arrangement with a country which forms the most convenient refuge for our criminals has long been felt; crimes among the most dangerous to social order have been committed with impunity; their perpetrators have been enabled to enjoy security in a country adjacent to our own and convenient of access." This statement applies, we are bound to remark, with much greater force to England. It is hardly too much to say that for one fugitive criminal who escapes from the United States to the United Kingdom under the existing law ten escape from the United Kingdom to the United States.

The convention, which, as MR. BLAINE contends, only places the extradition law between the United States and the United Kingdom on a level with the modern practice of all civilized Governments, does not go an inch beyond established precedents and obvious necessity. Manslaughter, counterfeiting or dealing in counterfeited money, embezzlement, larceny, fraud by any one in a position of trust, perjury, offences against women and children, burglary, piracy by the law of nations, mutiny, and offences against the laws for the suppression of slavery and the slave trade are now added to the narrow list of extraditable crimes enumerated in the 10th article of the Ashburton Treaty of 1842. MR. BLAINE enters into an elaborate vindication of these extensions of the law of extradition. We are scarcely called upon to follow him in his argument. From the point of view of an American politician, it is, probably, most important to bring forward the fact that nothing has been conceded to England which has not been previously granted, and in almost all cases many years ago, to other nations.

As MR. BLAINE's contention is, and rightly, that the enlargement of the facilities of extradition is for the benefit of the people of the United States, and as we are sure that it is also for the benefit of the people of the United Kingdom, we feel that we need not enter too curiously into the niceties of this branch of the inquiry. The only question on which it is possible to raise a dispute is that touching extradition for offences against the laws of both countries for the suppression of slavery and the slave trade. No cavils on this score will be forthcoming here, for public opinion in England is keenly in favour of a vigorous anti-slavery policy. It appears that the United States have already entered into an agreement to this effect with Spain, and MR. BLAINE takes note that his Government are parties to the measures which are being adopted by the international congress at Brussels in order to deliver Africa from the tyranny of the slave-traders.

It is no matter for surprise that the Government of the United States, in agreeing to this extension of the right of extradition, should stipulate once more for the exclusion of what are called "political" offences. On this point MR. BLAINE is brief and dry enough. The convention itself says that any person accused "shall not be surrendered if the offence in respect of which his surrender is demanded be one of a political character, or if he prove that the requisition for his surrender has in fact been made with a view to try to punish him for an offence of a political character." The interpretation of this article leaves room for many doubts. Would the men who plotted and executed the assassination of PRESIDENT LINCOLN or of LORD FREDERICK CAVENDISH be safe, under its provisions, from the penalties of ordinary murderers? However this may be, no exception can be taken to the understanding, on which MR. BLAINE lays much stress, that "persons surrendered shall not be tried for any other offence than that for which the extradition was granted." MR. BLAINE says that this exception is embodied in most of the recent extradition treaties entered into by the Government of the United States and that it is in harmony with the latest decision of the Supreme Court. In the same sense MR. BLAINE's settlement provides that the extradition clauses shall not "apply to any of the crimes therein specified which shall have been committed, or to any conviction which shall have been pronounced, prior to the date at which the convention shall come into force." This policy, as we pointed out some time ago, will give fugitive criminals, on both sides of the

border, a "close time," of which they will be, no doubt, ready enough to avail themselves. It remains to be seen, when the new law comes into practical operation, how far the exemption of "political offences" from the scope of the Treaty will defeat its objects.

[over

(FROM OUR CORRESPONDENTS.)

ANGLO-AMERICAN EXTRADITION.

PHILADELPHIA, JAN. 26.

The following is Secretary Blaine's letter to the President, dated December 16, last, transmitting the new Anglo-American Extradition Treaty. Both documents have been sent to the Senate:—

"I have the honour to transmit herewith, for submission to the Senate, the convention signed by me, under your directions, and by the British Minister, under the authorization of Her Majesty's Government, for the extradition of fugitives from justice. The only existing arrangement between the United States and Great Britain for the delivery of persons charged with crime is found in the tenth article of the Webster-Ashburton treaty of extradition—the convention of the United States now in force. It embraces only the crimes of murder, assault with intent to commit murder, piracy, arson, robbery, forgery, and the utterance of forged paper. This is the smallest number of offences found in any of our extradition treaties, except that with the Hawaiian Islands of 1849, in which the list is the same. The insufficiency of such an arrangement with a country which forms the most convenient refuge for our criminals has long been felt. Crimes among the most dangerous to social order have been committed with impunity; their perpetrators have been enabled to enjoy security in a country adjacent to our own and convenient of access. From time to time attempts have been made to provide a remedy for this condition of affairs, but from one cause and another these efforts have been unsuccessful. The failure of the treaty concluded at London in June, 1886, left the way open to further negotiations which resulted in the convention now transmitted. This convention is supplementary to the treaty of 1842. In the 47 years during which the latter arrangement has been in operation it has been the subject of repeated judicial construction. There has grown about it a mass of practice which it was not thought wise to disturb. The present convention

extends the list of offences up to the limits set in our extradition treaties with other Powers. The first offence added is manslaughter, which is included in the treaty with the Netherlands proclaimed in June last; next is counterfeiting, or altering money, or bringing counterfeit or altered money into circulation—grave crimes which the Courts of Canada decided in the case of Truman Smith in 1868 not to be embraced in the offence of forgery and utterance of forged paper, a construction which has since been adhered to. Embezzlement, larceny, obtaining money or goods by false pretences, receiving money, valuable securities, or other property, knowing the same to have been embezzled, stolen, or fraudulently obtained, are important offences which it is usual to insert in extradition treaties. Embezzlement is found in at least 14 extradition treaties of the United States; larceny is found in treaties with the Netherlands and Peru, and, with the limitation that the goods and chattels stolen shall be of the value of $25 or upwards, in treaties with Mexico and Spain. But the limitation based upon the value of things stolen is both illogical and unnecessary. Cases will readily occur in which the thing stolen may itself be of small pecuniary value, but of great importance as evidence or for other purposes. Besides, the formalities attending extradition proceedings and the fact that the demanding Government is required to pay all expenses offer better guarantees against demands based upon trivial causes than an insignificant pecuniary limitation. Obtaining money or goods by false pretences is found in the treaties with Spain and the Netherlands, and the reception of property criminally or fraudulently obtained is found in treaties with Belgium and Luxemburg. The importance of including the latter offence in a treaty with Great Britain has been shown in several cases of fugitives who have sought an asylum in Canada. It is included in the treaties of Great Britain with France, Belgium, Spain, Luxemburg, Guatemala, Salvador, Uruguay, and Mexico. Offences of improperly obtaining and receiving are both of serious consequence to commercial credit, and some of the most celebrated modern criminal cases have been of that character. Of not less importance is the offence of fraud by a bailee, banker, agent, factor, trustee, or director, member, or officer of any company which is made criminal by the laws of both countries. Some of the most notorious of criminals who have taken refuge in Canada after committing crimes in the United States which have affected disastrously the fortunes of many people would have found themselves deprived of asylum under that provision. Per-

jury or subornation of perjury is found in the recent treaty with Japan. Rape is found in the Webster-Ashburton Treaty of the 9th of August, 1842. This is the oldest of extradition treaties. Kidnapping, child-stealing, and abduction are also familiar offences. Burglary is frequently included. Either piracy simply or piracy by the Law of Nations is found in nearly all extradition treaties of the United States. In the treaty of 1842, to which the present convention is supplementary, piracy is specified among extraditable crimes; but as it has been held by the Courts in England to cover only piracy by municipal statute, piracy by the Law of Nations is now inserted. Offences on shipboard are included in many of our extradition treaties. Crimes and offences against the laws of both countries for the suppression of slavery and the slave trade are included in the treaty with Spain. In this relation it is pertinent to advert to the fact that this Government is at present participating in the International Congress at Brussels, assembled for the purpose of devising measures to put an end to the African slave trade. From this brief review of the list of offences included in the present convention, it is seen that they are merely common crimes which are made punishable by the laws of all civilized States, and are not such as are made penal in any particular country by reason of peculiar conditions there existing. The present convention only places our extradition relations with Great Britain on a modern basis, and is in strict accord with the policy maintained by this Government in its similar relations with other Powers. The second article of the convention contains a stipulation against the surrender for trial for political offences. The third article provides that persons surrendered shall not be tried for any offence other than that for which the extradition was granted. The latter provision is in most of our recent treaties, and is in harmony with the late decision of the Supreme Court of the United States in the Rauscher case. The eighth article provides that the convention shall not apply to any of the crimes therein specified which shall have been committed, or to any conviction which shall have been pronounced, prior to the date at which the convention shall come into force. Thus, while extending the list of extradition offences, the present convention contains all the safeguards and limitations which public law and international usage require or, indeed, admit of.

JAMES G. BLAINE."

Dispatch No. 191, Lincoln to Blaine, dated March 11, 1890.

No. 191.

Legation of the United States,
London, March 11, 1890.

The Honorable
James G. Blaine,
Secretary of State,
&c &c &c

Sir,

I have the honor to inform you that, in pursuance of the directions contained in your Instruction No. 193, of the 25th ultimo, I to-day effected with the Marquis of Salisbury, Her Majesty's Secretary of State for Foreign Affairs, the exchange of the ratifications of the treaty between the United States and Great Britain, signed in Washington on the 12th of July last, for the extradition of fugitives from justice; and I herewith transmit to you one of the two protocols of exchange executed in the premises, the other being retained by Lord Salisbury.

I also transmit herewith the exchange copy of the treaty executed by Her Majesty under the Great Seal.

With respect to the simultaneous proclamation (or publication) of the treaty preliminary to its coming into force under the 9th Article, I am advised that the forms prescribed by the laws of Great Britain require an Order of the Privy Council; and, inasmuch as the Council is summoned at the Queen's convenience, it is not now possible to fix a date for the publication. It is certain, however, in consequence of Her Majesty's intended departure from England on the 24th instant, that a Council will be summoned for some day prior thereto; and when that day is known, it is arranged that the date for publication of the treaty will be agreed upon between Lord Salisbury and myself.

I have to-day sent you this information by a cable message in cipher, of which a translation is herewith transmitted.

I have the honor to be,

Sir,

Your obedient servant,

ROB'T T. LINCOLN.

1/191

Enclosure.

Translation of cipher telegram—Mr. Lincoln to Mr. Blaine, March 11, 1890.

Accompaniment.

Box containing Treaty signed by the Queen and its ratification by the Minister and Lord Salisbury.

1/191

Translation of cipher telegram sent from the Legation March 11, 1890:—

Blaine, Secretary, Washington.

The ratifications of the treaty were exchanged to-day. Will not be published until after Order in Council. When Council summoned, certainly within ten days, publication date will be fixed with me.

LINCOLN.

Telegram, Lincoln to Blaine, dated March 18, 1890

TELEGRAM RECEIVED
Mar 20 1890

(Mr. Cridler, Diplomatic Bureau—Mar 19 1890)

(Secretary of State Mar 20 1890)

(2nd Assistant Secretary. Index and File Copy. A.A.A. Mar 19 1890)

Confirmed March 20, 90. Cridler.

From the United States Legation, London

London, March 18th, 1890.
Received P. M.

Blaine,
Secretary,
Washington.

Extradition treaty will be published, unless unforeseen prevents, in the Gazette next Tuesday, March twenty-five.

LINCOLN.

Telegram, Blaine to Lincoln, dated March 20, 1890

Telegram.

Department of State,
Washington, March 20, 1890.

Lincoln,
Minister, London.

Extradition treaty will also be published here Tuesday, March twenty-fifth.

BLAINE.

Note, Pauncefote to Blaine, dated March 24, 1890.

Mr. Cridler

(Department of State. Received Mar 25 1890)

(Diplomatic Bureau. Mar 25, 1890)

A. C. K'a. Mar. 26, 90. W.

Hon.
James G. Blaine
Sir,

Washington
March 24, 1890.

I have the honor to inform you that I have this day received a Telegram from Her Majesty's Principal Secretary of State for Foreign Affairs announcing that the Extradition Treaty between Great Britain, and the United States signed on the 12th of July, last, will be published tomorrow the 25th instant, in the London "Gazette" and that in accordance with the Provisions of Article 9, it will come into force throughout Her Majesty's Dominions ten days afterwards that is to say on the fourth of April next.

I have the honor to be with the highest consideration, Sir

Your most obedient,
humble servant,

JULIAN PAUNCEFOTE.

Note, Blaine to Pauncefote, dated March 26, 1890.

Department of State,
Washington, March 26, 1890.

Sir Julian Pauncefote, G. C. M. G. K. C. B.
&c. &c. &c.

Sir,

Acknowledging the receipt of your note of the 24th instant, stating that the recently concluded Extradition Treaty would be published in the London "Gazette" on 25th instant, I have to inform you that the treaty in question was duly proclaimed by this Government the same day and will accordingly come into effect throughout the jurisdiction of the United States on the 4th of April next.

I have, &c.

JAMES G. BLAINE.

Encl. 2 Printed copies of treaty.

Note, Durand to John Hay, dated May 8, 1904

D.W.C.
No. 95

(Diplomatic Bureau. May 10 1904)
(Department of State May 10 1024 AM 1904 Chief Clerk's Office)
(Index Bureau May 13 1904)

Ans'd. May 11 File G. Y. S.

British Embassy,
Washington,
May 8, 1904.

The Honorable
John Hay,
Secretary of State,
etc., etc., etc.,

Sir,

I have the honour to acknowledge the receipt of your note No. 70 of the 2nd instant, in which you were so good as to forward to me a warrant for the surrender of HERMAN WENGER on a charge of forgery.

The extradition of the accused was asked for on a charge of larceny and forgery, but the charge of larceny has been omitted in the warrant inasmuch as in the opinion

of the Department of State the facts constitute a case of embezzlement rather than of larceny.

I would, however, submit that the charge of larceny has been properly made for the following reasons:—

Article X of the Treaty of 1842 provides that the extradition shall be granted "upon such evidence of criminality as, according to the laws of the place where the fugitive shall be found, would justify his apprehension and commitment for trial if the crime or offence had there been committed." The crime or offence with which Herman Wenger is charged, in addition to that of forgery, is, by the laws of the State of New York, "larceny," as appears from Section 528 of the Penal Code. The Common Law crime of embezzlement is included in the definition of larceny, and it would appear that it does not now exist as a distinct and separate crime.

The crime is dealt with in sections 67 and 68 of 24 and 25 Vict. c. 96 of the laws of Great Britain, of which copies are annexed. Under section 67 it is larceny, and again by section 72 of the same Act, of which a copy is also enclosed, "larceny" may be proved and punished on an indictment for "embezzlement", and similarly "embezzlement" on an indictment for larceny.

Under these circumstances I have the honour to return the warrant in the hope that it may be found possible to include the charge of larceny therein.

I have the honor to be,
With the highest consideration,
Sir,
Your most obedient,
humble servant,
H. M. DURAND.

Letter, Hay to Choate, dated January 4, 1905

Department of State,
Washington, January 4, 1905.

His Excellency
Joseph H. Choate,
American Embassy, London.

Dear Mr. Choate:

I am in receipt of your private and confidential letter of the 23rd ultimo in regard to the proposed "bribery" addition to our extradition treaty with Great Britain.

It appears from your letter that as bribery is not included in the list of crimes in the British extradition act, an Act of Parliament adding "bribery" to the list of extraditable crimes is necessary before any treaty containing that offense could go into effect; and the difficulty which presents itself to you is in regard to the phraseology of the clause to provide when the treaty shall come into force.

After a careful perusal of your note, I am of the opinion that a solution of the matter might be afforded in one of two ways:

1. Propose to the British Government the language indicated on the second page of your letter, viz: "It shall come into force ..... days after its publication, in conformity with the laws of the High Contracting Parties," at the same time giving assurances that the treaty shall not be submitted to our Senate until the British Parliament shall have passed the required Act.

If the British Government will not agree to this, then—

2. Use language indicating that the treaty shall not come into force until the passage of the required act. Then the treaty can be held and not submitted to our Senate until the British Act is passed, and in submitting it to the Senate the information can be furnished that the British Act has passed.

Very truly yours,

JOHN HAY.

Despatch No. 1536, Choate to Hay, dated February 28, 1905

No. 1536. American Embassy, London, February 28th, 1905.

The Hon. JOHN HAY,
&c., &c., &c.,
Secretary of State.

Sir,

Referring to your Instruction No. 1285 of October 19th, 1903, and enclosing a draft of a Convention supplementary to the existing Extradition Treaty with Great Britain, which I was to submit to Lord Lansdowne, and endeavour to negotiate with him, I have now the honour to report that our negotiations have resulted in a modified form of the Convention, which can be signed at once if it meets with your approval.

I promptly laid the matter before Lord Lansdowne both in an oral interview, and in a note of October 30th, 1903 of which I enclose a copy. He was not disposed to enter upon much discussion of the subject at first, because it was of such a nature that it must necessarily be first submitted to the Law Officers of the Crown. He seemed to think that there were serious difficulties in the way, especially as it would require an Act of Parliament to enlarge the definitions of the Treaty so as to include Bribery as an extraditable offence. He promised, however, to submit the matter promptly to the Law Officers, and to report to me the result of their consideration of it. I expressed the belief that Parliament would readily approve if we, as a matter of mutual interest, agreed in the conclusion that Bribery should be made an extraditable offence and signed A Treaty to that effect. He evidently was not inclined to entertain the matter at all until he should have obtained the opinion of the Law Officers.

I made occasional enquiries, with no definite result, until the 28th of December, when I received from him a note bearing that date, of which I enclose a copy, by which he seems to have considered the necessity of obtaining an Act of Parliament approving such a Treaty as a fatal obstacle, and also, that owing to the complexity and variety of the offence, and to the large number of different and differing jurisdictions involved, it would be difficult to frame a satisfactory mutual agreement which would be thoroughly reciprocal between the two countries.

This was rather disappointing, but I told Lord Lansdowne in a subsequent interview that our Government was very much in earnest in the matter, and that I should not regard his note as final, but would consider both of his objections, and would make them the subject of a further communication.

I accordingly, after a careful examination of the grounds upon which his objections rested, addressed him a further note, bearing date February 11th 1904, of which I enclose a copy.

Much time then elapsed with a response to this note, but I was repeatedly advised by Lord Lansdowne, that the matter was being seriously considered, and shortly before the 6th of June I was gratified to learn from him, that subject to the action of Parliament making Bribery an extraditable offence, he was ready to enter into a Treaty to that effect, but that his Government desired to include in the

same Treaty, criminal offences against the Bankruptcy Laws, and that he had prepared a note to me on the subject which would in due course be received.

I accordingly received the note dated June 6th, 1904, of which I enclose a copy.

You will observe that His Majesty's Government, being desirous of meeting the wishes of our Government as far as possible, are willing to enter into the proposed Treaty "on the clear understanding that it cannot be brought into operation in this country unless and until the sanction of Parliament has been obtained to the necessary alteration of the law," and that the Penultimate paragraph of Article II of our draft Convention would therefore require amendment, and he suggests that it should run as follows:—"It shall come into force at a date subsequently to be agreed upon in conformity with the Laws of the contracting parties &c."

The objection to this seemed to me to be, that it called for a second agreement, whereas it is desirable that when we have once agreed to the provisions of the Treaty, no second agreement should be necessary, but that the Treaty itself, should fix the date when it shall go into operation, even though indirectly by reference to some other event, if that should be necessary.

I have looked into the matter of former differences in discussions between the two Governments, relating to the inclusion of fraudulent bankruptcy referred to by Lord Lansdowne in his note. In the negotiations which preceded the Convention signed by Mr. Phelps and Lord Rosebery, on the 25th of June 1886, but which was rejected by the Senate on the 1st of February 1889, I find that Lord Granville, in the Memorandum communicated to Mr. Lowell informally on the 2nd of December 1884, had said, in reference to the suggestion which Mr. Lowell under instructions had made to omit from the Draft Treaty then under consideration, the following:—

"*Obtaining money or goods by false pretences.*	Her Majesty's Government would have preferred the retention of this offence, but will not object to its omission if pressed. They would however suggest that it should be retained but qualified by a limitation to 500 dollars or 100 Pounds as proposed for larceny.
and	

Crimes by Bankrupts against Bankruptcy Law.

This offence is considered by Her Majesty's Government to be a most important one in view of the large commercial transactions of the two countries, and they are of opinion that it would be most unwise to omit it."

and after quoting from the President's Message of 12 May 1884 (48th Congress 1st Session Ex. Doc. No. 156) the following passage—

"The bulk of the representations made to this Department in favour of an enlargement of the list, have urged that Fraudulent Bankruptcy and embezzlement should be especially named" he proceeds—

"Her Majesty's Government earnestly hope, therefore, that the United States Government will not insist on this offence being excluded from the list of crimes."

Mr. Bayard, in his confidential instruction to Mr. Phelps No. 73 of August 4, 1885, commenting on Lord Granville's Memorandum, after assenting to the inclusion of "obtaining by false pretences money or goods of the value of 50 dollars or ten Pounds and upwards", adds—

"4. Article II Item 7. "Crimes by Bankrupts against Bankruptcy Law."

"I am constrained to maintain the ground already taken by this Government adversely to this Item. As you are aware, this Government has at present no general Bankruptcy Law and the Insolvent Laws of the different States are so entirely devoid of uniformity that regularity in proceedings of demand and surrender would be next to impossible. In the present state of the Law, therefore, the above item is unacceptable to this Government."

In his despatch No. 143 of November 23rd 1885 Mr. Phelps, referring to Mr. Bayard's Instruction No. 73 last quoted, advises the omission from the draft Treaty of the crime of obtaining money or goods by false pretences and states his objections thereto:—

(1) no such clause in any Treaty of the United States and no special reason for its insertion in a Treaty with Great Britain.

(2) It is a crime very difficult to define—receives different definitions in different jurisdictions, and is likely to give rise to vexatious and doubtful questions on the point whether the facts relied on are really criminal or only fraudulent. It is created by Statutes that differ widely in different States. And he points out supposed difficulties in the way of the practical operation of a treaty including such a crime, owing to the varying legislation about it in different States.

(3) That this offence is usually not above the grade of a misdemeanour, and that any crime less than felony is below the dignity of an Extradition Treaty, or of international proceedings.

(4) Liable to abuse to answer private purposes—would frequently be resorted to unjustly as a means of obtaining payment from Insolvents for goods sold.

And then, referring to the proposed inclusion of the further crime of receiving goods &c. knowing the same to have been obtained from the owner by false pretences, and insisting upon its omission on the same grounds, he says:—

"It is also to be remarked in respect of both these offences that they are of the same class and stand upon very analogous grounds with that of 'Fraudulent Bankruptcy' which the British Government have proposed to include in the Treaty, and which the State Department has instructed me (in my judgment most wisely) to object to.

"I think the objections to the inclusion of that offence are much weakened when these are introduced, and much strengthened by their exclusion. Because all I have said in respect of these crimes is equally applicable to that of 'Fraudulent Bankruptcy.'"

After analysing and discussing all the terms of the entire Draft Treaty in a most learned and satisfactory manner, Mr. Phelps encloses to Mr. Bayard his draft of a Convention, which omits all three offences altogether.

In a cipher cable received at the Embassy 20 February 1886, Mr. Bayard instructs Mr. Phelps (Translation) "The time is now propitious to conclude amendment to existing Extradition Treaty proposed by you in your 143. Your draft wholly acceptable to me."

From the Treaty as signed 25 June 1886, "Fraudulent Bankruptcy" as well as the other two offenses objected to by Mr. Phelps were omitted.

Of the discussions in the Senate which resulted in the rejection of this Treaty I have no knowledge—nor of the negotiations at Washington which led to the Treaty of July 12, 1889, nor of those which led to the latest Treaty of December 13th 1900.

But the significant fact is that the last named Treaty includes the offence of "obtaining money, valuable securities or other property by false pretences"—to which Mr. Phelps had in 1885 so strenuously objected, and had regarded his objections thereto to apply in full force to 'Fraudulent Bankruptcy'. All the objections which twenty years ago obtained to making the crime of 'obtaining money &c. by false pretences' an extraditable offence have been waived by our Government or regarded as no longer tenable, or sufficient to be insisted on, and its inclusion in the last named Treaty has, I believe, worked well.

Now, it is manifest from Mr. Phelps's discussion of the matter, that he regarded the objections to the inclusion of Fraudulent Bankruptcy as an extraditable offence, as analogous to those against the inclusion of obtaining money &c. by false pretences—and that if the one were removed the other would disappear. He says expressly that "these offences are of the same class and stand upon very analogous grounds," and that the objections to the inclusion of Fraudulent Bankruptcy are much weakened when 'false pretences' are introduced and much strengthened by their exclusion and that all he has said in respect of "false pretences" is equally applicable to "fraudulent bankruptcy."

If one examines the Extradition Treaties made from time to time between the United States and other countries, a growing liberality is manifest, and especially an increasing purpose and disposition to include all the crimes (non-political) which are equally such by the laws of both parties to the Treaty, and it is difficult to state any good reason why parties guilty of any such crimes, should be permitted to escape punishment therefor, by taking refuge in the territory of the other contracting party. In other words the more rogues we can catch and punish by extradition Treaties the better, and the constantly enlarging scope and number of the crimes embraced in such Treaties show that this is the modern accepted view.

I am therefore inclined strongly to recommend the acceptance of Lord Lansdowne's proposition to include "of-

fences against Bankruptcy Laws made criminal by the laws of both countries'' among extraditable offences as a fair equivalent for his concession as to Bribery and as in itself a desirable addition by whomsoever proposed. I hope and believe that our present Bankruptcy Law is to be regarded as a permanent one, and so Mr. Bayard's chief objection, that in the state of our law at that time, when he wrote in 1885, there was no general bankruptcy law, is no longer pertinent.

You will observe that the form in which this clause was proposed by Lord Granville in 1884 was different. It was ''crimes *by Bankrupts* against Bankruptcy Law'' and as now proposed it is ''offences against Bankruptcy Laws made criminal by the laws of both countries.'' I have called Lord Lansdowne's attention to this difference, but he still desires it in the form now proposed.

I find that as indexed in Biron & Chalmers on Extradition p. 138, the United States is the only nation whose Extradition Treaty with Great Britain does not include crimes against Bankruptcy Laws in some form. In the treaties with Belgium, Denmark, Germany, and Sweden, it is ''crimes by Bankrupts against Bankruptcy Law.'' In the treaties with Argentina, Austria, Bolivia, Chile, Colombia, Ecuador, France, Guatemala, Hayti, Liberia, Luxemburg, Mexico, Monaco, Netherlands, Portugal, Roumania, Russia, Salvador, San Marino, Servia, Spain, Switzerland and Uruguay it is 'Crimes against Bankruptcy Law.' In the Treaty with Brazil the language used is ''Bankruptcy subject to criminal prosecution according to the laws applicable thereunto'' and in the Treaty with Italy it is simply 'Fraudulent Bankruptcy.' You will observe that in no treaty with any other power is the saving clause added ''made criminal by the Laws of both countries'', which I regard as important and valuable.

As I have said I strenuously objected to the provision contained in the form of Treaty submitted to me by Lord Lansdowne in his note of June 6th, 1904 that it should ''come into force at a date subsequently to be agreed upon &c.'' as requiring a further agreement, and I argued that the ordinary provision on that subject such as was contained in your draft was sufficient that it should ''come into force ten days after its publication in conformity with the laws of the High Contracting Parties.'' It being perfectly clear and undisputed that an Act of Parliament was required to make Bribery an extradition crime, they had it in their own control not to publish until such an Act had been passed.

The consideration of this objection caused much delay and was several times referred to in conversations between Lord Lansdowne and myself while it was still held under advisement by the Law Officers.

Meanwhile I was considering the difference between the definition of Bribery in your draft, and in that submitted in the form covered by his note of June 6th 1904—the former being—

> "Bribery, defined to be the giving, offering or receiving of a reward to influence one in the discharge of a legal duty," and the latter being—
>
> "Bribery, defined to be the offering, giving or receiving of Bribes made criminal by the laws of both countries."

In offering this Lord Lansdowne expressed the opinion that "Bribery" alone would be sufficient for the purposes of English Law, but suggested the addition of the words "defined to be the offering, giving or receiving of bribes" in deference to our wish for a further definition, and of the further words "made criminal by the laws of both countries" as the qualification already approved and in use in Article I (4) of the Convention of 1889, relating to frauds by bailees, etc.

Upon an examination of the English Law on the subject of "Bribery" I came to the conclusion that his proposed definition was quite as comprehensive and broad as that proposed by us and perhaps more so, and that it came to practically the same thing for extradition purposes. There was perhaps something a little vague and open to dispute in the word "reward" and the words "in the discharge of a *Legal* duty" as distinguished from *official* duty of which the crime is usually predicated, while in the form proposed by them as qualified it would only be necessary in each case to find the offering, giving or receiving of a Bribe of any nature made criminal by the laws of both countries.

Careful study of the English law satisfied me that it would hardly be possible to find a case of Bribery in any form in the United States that is not already made criminal by the laws of England. The qualification makes the provision proposed by them entirely reciprocal and fair between the two countries, about what it should be according to the latest exposition of our Supreme Court, and was in my judgment about the best we could get, as we could hardly expect Great Britain to surrender fugitives for anything that was not bribery made criminal by their own laws any more than they would expect us to do so.

The following are extracts from Volume 2 of Cyclopaedia of English Law, 1897, p. 245 as to Bribery:—

"Bribery. *At Common Law.* Bribery is the offence of giving or offering to any person holding judicial or other public office any gift or reward in order to influence the conduct of such officer in relation to his office. The acceptance by any judicial or other public officer of any such gift or reward also constitutes the offence of Bribery (see the various definitions of bribery in 3 Inst. 145 and Hawk. P. C. 414).

"Wherever a person is bound by law to act without any view to his private emolument and another by a corrupt contract engages such person on condition of the payment or promise of money or other lucrative consideration to act in a manner which he shall prescribe both parties are by such contract guilty of bribery. (2 Dougl, K. B. 400).

"There is no doubt that the corruption of judicial and other public officers has always been a crime at Common Law. (See 3 Inst. 145-148 1 Hawk P. C. 414, 415. 4 Black Com. 140 5th Rep. C. L. C. p. 20 Stephen's Hist. Crim. Law, Vol. III. p. 251. Stephen's Digest of Criminal Law 5th Edn. p. 97, Russell on Crimes 6th Ed. Vol. I. p. 443).

"Sir J. F. Stephen, whilst admitting that the crime is of such rarity, that the definition is imperfect, and more or less conjectural, sums up the law as to judicial corruption by stating (Dig. of Crim. Law 5th Edn. p. 97) that anyone who gives or offers to any person holding any judicial office and every person holding such office who accepts any bribe commits a misdemeanour. As to what amounts to a bribe he lays down that "every gift or payment made in respect or in relation to any business having been, being, or about to be transacted before any such person in his office is a bribe whether it is given in order to influence the judicial officer or to reward him for something already done, and whether the thing done or to be done is itself proper or improper."

"*Bribery of public officers.* With regard to the corruption of public officers other than persons holding judicial office, it is a misdemeanour by any means to induce any public officer to do or omit to do any act which the offender knows to be a violation of such officer's judicial duty. (See 3 Inst. 144 1 Hawk P. C.

414. 5th Rep. C. L. C. Art. 35, p. 47. Steph. Digest Crim. Law 5th Edn. p. 97. See also R. vs. Vaughan 1769, 4 Burr. 2494, R. vs. Lancaster, 1890, 16 Cox C. C. 737) The mere offer of a bribe, though it be not accepted, is in itself a misdemeanour, it being an attempt to commit a misdemeanour. (Vid. per Ld. Mansfield C. J. R vs. Vaughan, 1769, 4 Burr. 2501. See also R vs. Young cited in 2 East at p. 16.)

"*Sale of Offices.*" The buying and selling of offices, that is, the taking or giving of a reward for offices of a public nature, being obviously prejudicial to the interests of the public, is considered as bribery and is indictable at common law and under various statutes (many cases cited). So various statutes such as The East India Company Act, 1793, The Customs Laws Consolidation Act, 1876, The Inland Revenue Regulation Act 1890. And the Public Bodies Corrupt Practices Act, 1889, 52 & 53 Victoria c. 69, after reciting in the preamble that it is expedient more effectually to provide for the prevention and punishment of Bribery and corruption of and by members, officers or servants of Corporations, Councils, Boards, Commissions or other public bodies, makes the bribery of such persons, with a view of their doing, or forbearing to do, anything in respect to any matter or transaction actual or proposed in which the public body is concerned, a misdemeanour both in the person who offers, or gives the bribe, and in the person who solicits or receives it.

"*Bribery at Elections.* By far the most important aspect of the law of bribery in modern times is its relation to elections. There is authority for the proposition that bribery at elections for Members of Parliament was always an offence at common law, punishable on indictment or information. (See per Ld. Mansfield C. J. R. vs. Pitt, 1762, 3 Burr. 1338, 1 Hawk P. C. 415). But the law relating to bribery at elections was placed upon a statutory basis by the Corrupt Practices Prevention Act 1854, 17 & 18 Victoria c. 102 which repealed earlier Acts (of 1729, 1809 and 1842) on the same subject. The definition in this Act of Bribery at Parliamentary Elections has by later Acts been adopted and made applicable to other elections."

According to the reasonable construction of the qualification "made criminal by the laws of both countries" in the Treaty of 1889, as recently expounded by the Supreme

Court of the United States in the Whitaker Wright case, absolute identity of the Statutes in the two countries defining the offence is not necessary to bring a case within the meaning of the provisions. It is sufficient if the essential character of the transaction is the same and is made criminal by both Statutes.

> "The ordinary technicalities of criminal proceedings" says the Court "are applicable to proceedings in Extradition only to a limited extent."
>
> "The general principle of international law is that in all cases of Extradition the act done on account of which Extradition is demanded must be considered a crime by both parties and as to the offence charged in this case the Treaty of 1889 embodied that principle in terms, the offence must be 'Criminal by the laws of both countries.'" Wright vs. Henkel, 190 U. S. 58.

I have no doubt that this reasonable and liberal exposition would be followed by the English Courts.

It seems also that by the Common Law of England, bribery was punishable in respect to all sorts of official persons in the discharge of their official duties, and by the British Extradition Act, the enumerated crimes are "to be construed according to the law existing in England or in a British possession (as the case may be) at the date of the alleged crime, whether by Common Law or by Statute made before or after the passing of this Act."

Being satisfied to recommend for your adoption the definition of Bribery proposed by Lord Lansdowne, and to put an end to the long delay which appeared to be caused by the objection which I had made to the clause providing when the Treaty should come into force, I finally proposed that if he would meet that objection by a modification that would make the Treaty itself determine when it should take effect, I would so far as I was concerned, make no objection to his definition of Bribery.

Lord Lansdowne at the suggestion of his legal advisers proposed various forms for the clause in Article II providing when the proposed Treaty should take effect.

On November 8th 1904 I received a note from him dated November 5th (a copy of which and of its enclosure I enclose) in which he proposed it in this form—"It shall come into force at a date subsequently to be agreed upon, provided that the laws of the High Contracting Parties then in force provide for the granting of Extradition in the cases hereinbefore mentioned" &c.

But this had the same vice as the form to which I had previously objected, that it required a further agreement to make it a Treaty, and in a subsequent interview I pointed this out.

On the 23rd of November I received from Lord Lansdowne a further note dated November 21st (a copy of which, and of its enclosure, is annexed) stating that he was advised that the formula proposed by me for the paragraph providing when the Treaty should take effect might be considered ambiguous inasmuch as the words "in conformity with the laws" &c. might be read as merely referring to publication according to law, and offering a further amendment to the final paragraph so as to provide that the Treaty shall come into effect " days after the publication of the Treaty by the High Contracting Parties, and such publication shall be made whenever the Laws of the High Contracting Parties then in force provide for the granting of Extradition in the cases hereinbefore mentioned" &c.

But this seemed to be based upon the idea that as an Act of Parliament would be required to make Bribery an extraditable offence, so an Act of Congress on our part would be required for the same purpose, ignoring the consideration that the Treaty itself when ratified by the Senate would become the Supreme Law of the land, and would dispense with the necessity of any Act of Congress. Furthermore, the clause as proposed by him seemed to me to create an impasse, and that strictly construed, or perhaps construed in any way, the Treaty by its terms could never come into force, since it provided that it should not come into force until after publication, and in the same breath that it should not be published until after it came into force, i.e. until after the Treaty ratified by the Senate should have provided for Extradition in the cases mentioned.

At subsequent interviews I stated these views to Lord Lansdowne, who requested me to send him a note embodying them.

Accordingly on the 6th of January last I addressed him a note, of which I annex a copy, in which I endeavoured to make it clear that the form last proposed by him for this clause was inadmissible and asking him to reconsider it. I also asked that a Bill should be prepared for the necessary Act of Parliament making Bribery an extraditable offence and introduced at the beginning of the Session.

I was awaiting an answer to this note when on the 14th of January I received your letter of January 4th sug-

gesting other forms for the clause if it should be necessary to resort to them, and on the 31st I was gratified to hear informally from the Solicitor General that the Law Officers upon consideration of my note of January 6th which had been referred to them had concluded to adopt the form for this which I had asked from the beginning.

On the 22nd instant I received from Lord Lansdowne a personal note (of which I enclose a copy) stating that the Law Officers had expressed their concurrence in the form for the clause which I desired should be adopted, and that it only required the assent of the Home Secretary, also that he had pressed upon the Home Secretary the necessity of introducing a Bill to give effect to the Convention when concluded at the earliest possible moment.

On the 24th instant I received from Lord Lansdowne a formal note (a copy of which I enclose) stating that His Majesty's Government are prepared to accept the wording of the clause in question suggested in my note to him of January 6th "provided it is clearly understood that publication is to be made by this country only when the necessary alteration in the law shall have been effected," and enquiring whether our Government preferred that the Convention as settled should be signed in London or in Washington, and if the former they would prepare for its signature here on the 1st of March.

It seemed to me that as I had acted in the matter from the beginning subject to your approval, the Convention together with the whole correspondence and the history of the negotiations should be first submitted to you, and thereupon I should take your directions as to the time and place of signature.

I have accordingly to-day addressed to Lord Lansdowne a note of which I enclose a copy. And I shall be glad to hear at your early convenience whether you approve the Convention in the final form to which Lord Lansdowne and I have brought it (and of which I enclose a printed copy)—and if so what is your pleasure as to its being signed in London or in Washington.

In the former case I suppose you would send me a special authority.

I have the honour to be,

Sir,

Your obedient Servant,

JOSEPH H. CHOATE.

Enclosures.

1. Mr. Choate to Lord Lansdowne, October 30th, 1903.
2. Lord Lansdowne to Mr. Choate, December 28th, 1903.
3. Mr. Choate to Lord Lansdowne, February 11th, 1904.
4. Lord Lansdowne to Mr. Choate, June 6th, 1904.
5. Lord Lansdowne to Mr. Choate, November 4th, 1904.
6. Lord Lansdowne to Mr. Choate, November 21st, 1904.
7. Mr. Choate to Lord Lansdowne, January 6th, 1905.
8. Lord Lansdowne to Mr. Choate, February 22nd, 1905.
9. Lord Lansdowne to Mr. Choate, February 24th, 1905.
10. Mr. Choate to Lord Lansdowne, February 25th, 1905.
11. Final form of proposed Convention.

Letter, Choate to Lord Lansdowne, dated April 5, 1905

American Embassy, London.
April 5th, 1905.

My Lord,

Referring to our conversation of this afternoon in respect to difficulties suggested as to the phraseology of the Bill prepared by the Home Office to add Bribery to the list of extraditable offences, the chief of which, as I understood it, was, that our Treaty authorized by it might require the extradition of persons for some offence described as Bribery by our laws which was unknown to the English law, I beg to recall to Your Lordship's attention my note of February 11th, 1904, in which I fully discussed the subject and attempted to show that the definition of Bribery as understood by the law of England was identical with, or at least substantially resembled, the law prevailing in the United States, both by Federal and State enactments, defining Bribery, and in a Memorandum annexed to that note I gave Your Lordship a statement in detail of the various definitions of Bribery in the Statutes of the several States and in the Acts of Congress which illustrated the views which I presented, and I urged, after a careful examination of the Statutes referred to, that there is something more than a substantial resemblance between the definition of Bribery as there described, and the English definition of the crime, and speaking in a general way, I submitted that the English definition is broad and comprehensive enough to include all the American definitions, some of which are much more limited and specific in their descriptions of the offence, so that if Bribery were added to the extraditable crimes in our Treaty, as my Government

desires that it should be, it would in every practical sense be the offence which is punishable by English law as well as by American law.

Your Lordship will remember that in your note of June 6th, 1904 you offered a definition of Bribery to be inserted in the Treaty as a substitute for that which I had originally proposed. The definition which I had proposed was:—

> "Bribery, defined to be the giving, offering or receiving of a reward to influence one in the discharge of a legal duty"

and the definition you proposed instead was:—

> "Bribery, defined to be the offering, giving or receiving of bribes made criminal by the laws of both countries."

In offering this Your Lordship expressed the opinion that "Bribery alone would be sufficient for the purposes of English law," but you suggested the addition of the words "defined to be the offering, giving or receiving of bribes" in deference to our wish for a further definition, and of the further words "made criminal by the laws of both countries" as the qualification already approved and in use in Article I (4) of the Convention of 1899 relating to frauds by bailees &c.

Upon an examination of the English law on the subject of Bribery I came to the conclusion that Your Lordship's proposed definition was quite as comprehensive and broad as that proposed by us and that it came practically to the same thing for extradition purposes.

Careful study of the English law satisfied me that it would hardly be possible to find a case of Bribery in any form in the United States that is not already made criminal by the laws of England. The qualification proposed by you "made criminal by the laws of both countries" seemed to me to make the provision proposed by you entirely reciprocal and fair between the two countries and about what it should be according to the latest exposition of the subject by the Supreme Court of the United States in the Whitaker Wright case. (Wright vs. Henkel 190 U. S. 40).

I thought that we could hardly expect Great Britain to agree to surrender fugitives for any offence that was not Bribery made criminal by her own laws any more than you would expect us to surrender them for anything that was not Bribery made criminal by our laws.

The following are extracts from Volume 2 of Cyclopaedia of English law, 1897, p. 245 as to Bribery:—

"Bribery. *At Common Law.* Bribery is the offence of giving or offering to any person holding judicial or other public office any gift or reward in order to influence the conduct of such officer in relation to his office. The acceptance by any judicial or other public officer of any such gift or reward also constitutes the offence of Bribery (see the various definitions of Bribery in 3 Inst. 145 and Hawk P. C. 414).

"Wherever a person is bound by law to act without any view to his private emolument and another by a corrupt contract engages such person on condition of the payment or promise of money or other lucrative consideration to act in a manner which he shall prescribe both parties are by such contract guilty of Bribery. (2 Dougl. K. B. 400).

"There is no doubt that the corruption of judicial and other public officers has always been a crime at Common Law. (See 3 Inst. 143-148 1 Hawk P. C. 414, 415. 4 Black Com. 140 5th Rep. C. L. C. p. 20 Stephen's Hist. Crim. Law, Vol. III, p. 251, Stephen's Digest of Criminal Law 5th Edn. p. 97, Russell on Crimes 6th Ed. Vol. I. p. 443.)

"Sir J. F. Stephen, whilst admitting that the crime is of such rarity, that the definition is imperfect, and more or less conjectural, sums up the laws as to judicial corruption by stating (Dig. of Crim. Law 5th Edn. P. 97) that anyone who gives or offers to any person holding any judicial office and every person holding such office who accepts any bribe commits a misdemeanour. As to what amounts to a bribe he lays down "every gift or payment made in respect or in relation to any business having been, being, or about to be transacted before any such person in his office is a bribe whether it is given in order to influence the judicial officer or to reward him for something already done, and whether the thing done or to be done is itself proper or improper."

"*Bribery of public officers.* With regard to the corruption of public officers other than persons holding judicial office, it is a misdemeanour by any means to induce any public officer to do or omit to do any act which the offender knows to be a violation of such officer's judicial duty. (See 3 Inst. 144 1 Hawk P. C. 414. 5th Rep. C. L. C. Art 35, p. 47. Stephen's Digest

Crim. Law 5th Edn. p. 97. See also R. vs. Vaughan 1769, 4 Burr. 2494, R vs. Lancaster, 1890, 16 Cox C. C. 737). The mere offer of a bribe, though it be not accepted, is in itself a misdemeanour, it being an attempt to commit a misdemeanour. (Vid. per Ld. Mansfield C. J. R. vs Vaughan 1769, 4 Burr. 2501. See also R. vs. Young cited in 2 East at page 16.)

"*Sale of Offices.* The buying and selling of offices, that is, the taking or giving of a reward for offices of a public nature, being obviously prejudicial to the interests of the public, is considered as bribery and is indictable at common law and under various statutes (many cases cited). So various statutes such as The East India Company Act 1793, The Customs Laws Consolidation Act, 1876, The Inland Revenue Regulation Act 1890. And the Public Bodies Corrupt Practices Act, 1889, 52 & 53 Victoria c. 69, after reciting in the preamble that it is expedient more effectually to provide for the prevention and punishment of Bribery and corruption of and by members, officers or servants of Corporations, Councils, Boards, Commissions or other public bodies, makes the bribery of such persons, with a view to their doing, or forbearing to do, anything in respect to any matter or transaction actual or proposed in which the public body is concerned, a misdemeanour both in the person who offers, or gives the bribe, and in the person who solicits or receives it.

"*Bribery at Elections.* By far the most important aspect of the law of bribery in modern times is its relation to elections. There is authority for the proposition that bribery at elections for Members of Parliament was always an offence at common law, punishable on indictment or information. (See per Ld. Mansfield C. J. R. vs. Pitt, 1762, 3 Burr. 1338, 1 Hawk P. C. 415.). But the law relating to bribery at elections was placed upon a statutory basis by the Corrupt Practices Prevention Act 1854, 17 & 18 Victoria c. 102, which repealed earlier Acts (of 1729, 1809 and 1842) on the same subject. The definition in this Act of Bribery at Parliamentary Elections has by later Acts been adopted and made applicable to other elections."

According to the reasonable construction of the qualification "made criminal by the laws of both countries" in the Treaty of 1889, as recently expounded by the Supreme Court of the United States in the Whitaker Wright case, absolute identity of the Statutes in the two countries defin-

ing the offence is not necessary to bring a case within the meaning of the provisions. It is sufficient if the essential character of the transaction is the same and is made criminal by both Statutes.

> "The ordinary technicalities of criminal proceedings" says the Court "are applicable to proceedings in Extradition only to a limited extent."
>
> "The general principle of international law is that in all cases of Extradition the act done on account of which Extradition is demanded must be considered a crime by both parties and as to the offence charged in this case the Treaty of 1889 embodied that principle in terms, the offence must be 'Criminal by the laws of both countries.'" Wright vs. Henkel, 190 U. S. 58.

I have no doubt that this reasonable and liberal exposition would be followed by the English Courts.

It seems also that by the Common Law of England, bribery was punishable in respect to all sorts of official persons in the discharge of their official duties, and by the British Extradition Act, the enumerated crimes are "to be construed according to the law existing in England or in a British possession (as the case may be) at the date of the alleged crime, whether by Common Law or by Statute made before or after the passing of this Act."

I think therefore that Your Lordship will perceive that not only are the definitions of Bribery, as set forth in my note of February 11th, 1904, substantially to the same effect in the two countries, but also that by the settled adjudications of your own Courts and by your legal authorities there is nothing made criminal as Bribery by law in the United States that has not long ago either by Common Law or by Statute been made criminal by the laws of Great Britain.

It is clear to my mind that the difficulties suggested arising from criticisms of the Bill drawn by the Home Office are entirely removed by Your Lordship's carefully considered qualification inserted in the Treaty "made criminal by the laws of both countries." It protects each country from the obligation to surrender fugitives charged with the crime of Bribery unless the offence as charged would be substantially criminal by its own laws.

If a fugitive from the United States were sought to be extradited from British dominions under the Treaty it would not be allowed unless the same offence in substance was found to be made criminal by the laws of Great Britain, and a fugitive from Great Britain sought to be extradited

from the United States on the charge of Bribery it would not be allowed unless the same offence in substance was found to be made criminal by the laws of the United States.

It was on these grounds that I accepted Your Lordship's definition of Bribery to be inserted in the Treaty, and recommended its acceptance to my own Government, which duly approved of it.

It would not become me to offer any suggestions as to the phraseology to be adopted in the proposed Bill. I should naturally have supposed that the more general and comprehensive definition of the Crime in the Act the better, leaving it for each Treaty made under it to insert any desirable limitations.

I find on reference to the schedules under the Extradition Act of 1870 that the extraditable crimes are there defined in the most general way, which is true both of the first and second Schedules. (Biron & Chalmers on Extradition pages 79 and 86). Of course it would be possible to insert in the proposed Act the limitations and qualifications prescribed in Your Lordship's definition which we have accepted, and which have been inserted in the Treaty.

The suggestion that the Bill does not restrict the addition of Bribery to a Convention between the United States and Great Britain, whose laws upon the subject practically conform, but might extend it to other countries whose systems of law were wholly different and which recognized acts or offences as Bribery which are wholly unknown to the English law, seems to me to be fully disposed of by the consideration that the Act merely permits the making of Treaties to include Bribery, but does not require it, and that in case such a Treaty were asked for by a country whose laws were abnormal as I have suggested, it could readily be denied.

I venture to express the hope that the difficulties which have been raised in respect to the Bill prepared by the Home Office may not stand in the way of the execution of the Treaty as it has been settled and agreed upon. I have submitted the whole correspondence to my Government, who from it have naturally concluded that the whole matter was settled, and that the Treaty was to be executed and have sent me the President's express authorization to sign the same.

Your Lordship will pardon me for being somewhat urgent in this matter. I have assured my Government, as I seemed warranted in doing, that after our protracted negotiations the matter was settled and the Treaty to be

signed, and I should be greatly disappointed to have to leave London without it.

I have, etc.

JOSEPH H. CHOATE.

The Most Hon.

The Marquess of Lansdowne, K.G.

Printed Copy of Convention, dated April 12, 1905

THE President of the United States of America and His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India, being desirous of enlarging the list of crimes on account of which extradition may be granted under the Conventions concluded between the United States and Great Britain on the 12th July, 1889, and the 13th December, 1900, with a view to the better administration of justice and the prevention of crime in their respective territories and jurisdictions, have resolved to conclude a Supplementary Convention for this purpose and have appointed as their Plenipotentiaries, to wit:

The President of the United States, the Honourable Joseph Hodges Choate, Ambassador Extraordinary and Plenipotentiary of the United States at the Court of His Britannic Majesty;

And His Britannic Majesty, the Most Honourable Henry Charles Keith Petty-Fitzmaurice, Marquess of Lansdowne, His Majesty's Principal Secretary of State for Foreign Affairs;

Who, after having communicated to each other their respective full powers, which were found to be in due and proper form, have agreed to and concluded the following Articles:—

ARTICLE I.

The following crimes are added to the list of crimes numbered 1 to 10 in the 1st Article of the said Convention of the 12th July, 1889, and to the list of crimes numbered 11 to 13 in Article I of the Supplementary Convention concluded between the United States and Great Britain on the 13th December, 1900, that is to say:

14. Bribery, defined to be the offering, giving or receiving of bribes made criminal by the laws of both countries.

15. Offences, if made criminal by the laws of both countries, against bankruptcy law.

ARTICLE II.

The present Convention shall be considered as an integral part of the said Extradition Conventions of the 12th July, 1889, and the 13th December, 1900, and the Ist Article of said Convention of the 12th July, 1889, shall be read as if the lists of crimes therein contained had originally comprised the additional crimes specified and numbered 14 and 15 in the Ist Article of the present Convention.

The present Convention shall be ratified, and the ratifications shall be exchanged either at Washington or London as soon as possible.

It shall come into force ten days after its publication in conformity with the laws of the High Contracting Parties, and it shall continue and terminate in the same manner as the said Convention of the 12th July, 1889.

In testimony whereof the respective Plenipotentiaries have signed the present Convention in duplicate, and have thereunto affixed their seals.

Done at London, this 12th day of April, 1905.

Despatch No. 1555, Choate to Hay, dated April 13, 1905.

No. 1555.

(Index Bureau Dept. of State Rec'd. Apr. 24 1905)

(Chief Clerk, Department of State. Apr 24 1905)

American Embassy, London.
April 13th, 1905.

Mr. Choate
To the Secretary of State.

Subject.

Extradition Treaty including "Bribery."

Synopsis.

Refers to Department's Instruction No. 1609 of the 13th ultimo conveying the President's authority for Mr. Choate to sign the above Treaty, and reports that after a slight misapprehension was cleared up the Treaty was signed on the 12th instant. Encloses the Treaty and a copy of the cable announcing that it was duly signed.

No. American Embassy, London.
April 13th, 1905.

The Hon. John Hay,
&c. &c. &c.

Sir,

Referring to your Instruction No. 1609 of the 13th ultimo conveying to me the President's special authority to sign the Treaty with Great Britain which I have been so long negotiating adding "Bribery" and "offences against Bankruptcy Law" to the extraditable crimes, I have the honour to state that I forthwith notified the Foreign Office of its receipt by me, and of my readiness to sign the Treaty and a time was appointed for that purpose.

Shortly before the time appointed, I was informed by Lord Lansdowne that a difficulty had been raised by one of his colleagues, suggested by the phraseology of the bill which had been prepared by the Home Office to be introduced into Parliament to authorize this addition to extraditable crimes.

I understood the objection to be that it might commit Great Britain to Treaties making "Bribery" extraditable with nations by whose systems of law crimes might be classed under that head unknown to British law. This seemed to raise questions which had already been disposed of in the negotiations which led to the settlement of the terms of the Treaty.

At Lord Lansdowne's suggestion I accordingly, on the 5th of April, addressed to him a further note on the subject, of which I annex a copy.

I was yesterday advised by the Foreign Office that Lord Lansdowne was ready to sign the Treaty. I accordingly attended at the Foreign Office and signed the Treaty with him—our part of which I have now the honour to enclose.

I immediately sent [illegible] a cipher cable announcing the fact, of which I enclose a copy.

I have the honour to be,
Sir,
Your obedient Servant,

JOSEPH H. CHOATE.

Enclosures.

1. Mr. Choate to Lord Lansdowne, April 5th, 1905.
2. Extradition Treaty. (Original)
3. Cable, Mr. Choate to Mr. Hay, April 12th, 1905.
4. One extra copy of Treaty, unsigned.

Undated Draft Treaties

Draft of a Treaty of Extradition between the United States of America and Great Britain.

THE United States of America and Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, having judged it expedient, with a view to the better administration of justice, and to the prevention of crime within their respective territories and jurisdictions, that persons charged with or convicted of the crimes hereinafter enumerated, and being fugitives from justice, should, under certain circumstances, be reciprocally delivered up; They have named as their Plenipotentiaries to conclude a Treaty for this purpose, that is to say:

The President of the United States of America, Hamilton Fish, Esquire, Secretary of State of the United States; and

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, the Right Honourable Sir Edward Thornton, a Member of Her Majesty's Privy Council, Knight Commander of the Most Honourable Order of the Bath, Her Envoy Extraordinary and Minister Plenipotentiary to the United States of America;

Who, after having communicated to each other their respective full powers, found in good and due form, have agreed upon and concluded the following Articles:—

ARTICLE I.

It is agreed that The United States and Her Britannic Majesty shall, upon mutual requisition by them or their Ministers, officers, or authorities respectively made, deliver up to justice all persons who, being charged with or convicted of any of the crimes enumerated in the schedule annexed to this Article, committed within the jurisdiction of either, such persons being actually within such jurisdiction when the crime was committed, shall seek an asylum or shall be found within the jurisdiction of the other. Provided that this shall only be done upon such evidence of criminality as, according to the laws of the place where the fugitive or person so charged shall be found, would justify his apprehension and commitment for trial if the crime or offence had there been committed, and the respective Judges and other Magistrates of the two Governments shall have power, jurisdiction, and authority, upon com-

plaint made under oath, to issue a warrant for the apprehension of the fugitive or person so charged, that he may be brought before such Judges or other Magistrates respectively, to the end that the evidence of criminality may be heard and considered, and if on such hearing the evidence be deemed sufficient to sustain the charge, it shall be the duty of the examining Judge or Magistrate to certify the same to the proper executive authority, that a warrant may issue for the surrender of such fugitive.

The expense of such apprehension and delivery shall be borne and defrayed by the party who makes the requisition and receives the fugitive.

SCHEDULE.

1. Murder, or assault with intent to commit murder.
2. Manslaughter.
3. Counterfeiting, or altering money, or uttering counterfeit or altered money.
4. Forgery, counterfeiting, or altering or uttering what is forged, or counterfeited, or altered.
5. Embezzlement or larceny. The former of the two crimes signifies embezzlement of public moneys, committed within the jurisdiction of either party by public officers or depositaries; or embezzlement by any person or persons, hired or salaried, to the detriment of their employers, when the crime is subject to punishment by the laws of the place where it was committed.
6. Crimes by bankrupts against bankruptcy laws.
7. Fraud by a bailee, banker, agent, factor, trustee, or director, or member or officer of any company, and which fraud is made criminal by any law for the time being in force.
8. Perjury, or subornation of perjury.
9. Rape.
10. Abduction.
11. Child-stealing.
12. Kidnapping.
13. Burglary, or housebreaking.
14. Arson.
15. Robbery.
16. Threats by letter or otherwise with intent to extort.

17. Piracy, by law of nations committed on board of or against a vessel belonging to the nation asking extradition.

18. Criminal sinking or destroying such a vessel at sea, or attempting or conspiring to do so.

19. Assaults on board such ship on the high seas, with intent to destroy life.

20. Revolt, or conspiracy to revolt, by two or more persons on board such a ship on the high seas against the authority of the master.

ARTICLE II.

If the fugitive criminal who has been committed to prison be not surrendered and conveyed away within two months after such committal (or within two months after the decision of the Court, upon the return to a writ of habeas corpus) he shall be discharged from custody; unless sufficient cause be shown to the contrary.

ARTICLE III.

No person surrendered by or to either of the Contracting Parties shall be triable or tried for any crime or offence committed prior to his extradition, other than for one of the offences enumerated in Article One, until he shall have had an opportunity of returning to the Country from which he was surrendered.

ARTICLE IV.

The provisions of this treaty shall not apply to any crime or offence of a political character, nor to acts connected with such crimes or offences—and no person surrendered by or to either of the contracting parties in virtue hereof shall be tried or punished for any political crime or offence nor for any act connected therewith, committed previously to his extradition.

ARTICLE V.

The surrender shall not take place if, since the commission of the acts charged, the accusation, or the conviction, exemption from prosecution or punishment has accrued by lapse of time, or other lawful cause, according to the laws of the place where the crime was committed.

ARTICLE VI.

The provisions of the Treaty shall not apply to any crime or offence committed prior to the date when it shall be brought into operation, other than those enumerated in Article X of the Treaty between the United States and Great Britain, concluded at Washington on the 9th of August, 1842.

ARTICLE VII.

If the individual claimed by one of the two Contracting Parties, in pursuance of the present Treaty, should be also claimed by one or several other Powers, pursuant to Treaty stipulations, on account of other crimes committed within their jurisdiction, his surrender shall, in preference, be granted in compliance with that demand which is earliest in date; unless any other arrangement should be made between the Governments which have claimed him, either on account of the gravity of the crimes committed, or for any other reasons.

ARTICLE VIII.

If the individual claimed should be under prosecution, out on bail, or in custody, for a crime or offence committed in the country where he may have taken refuge, or if a warrant for his arrest upon a criminal charge has been obtained in good faith, and with intent to proceed thereupon without delay, his surrender may be deferred until he shall have been set at liberty in due course of law.

In case he should be proceeded against or detained in such country, on account of obligations contracted with persons, whether individual or corporate, his surrender shall nevertheless take place, the complainant retaining his right to prosecute his claims before the competent authority.

ARTICLE IX.

Everything found in the possession of the fugitive criminal at the time of his arrest, which may be material as evidence in making proof of the crime, shall, so far as practicable, be delivered up with the person of the criminal at the time of the surrender.

Nevertheless the rights of third parties with regard to the articles aforesaid shall be duly respected.

ARTICLE X.

The stipulations of the present Treaty shall be applicable to all Foreign or Colonial possessions of either of the two High Contracting Parties.

The requisition for the surrender of a fugitive criminal who has taken refuge in a Foreign or Colonial possession of either Party, shall be made to the Governor or Chief Authority of such possession by a Consular Officer of the other, within the jurisdiction of such Governor or Chief Authority; or, if the fugitive has escaped from a Foreign or Colonial possession of the Party on whose behalf the requisition is made, by the Governor or Chief Authority of such possession. But no such requisition shall be made by a Consular Officer who is not authorized by his Government to make such requisitions.

Such requisitions may be disposed of, subject always, as nearly as may be, to the provisions of this Treaty, by the respective Governors or Chief Authorities.

The Contracting Parties shall, however, be at liberty respectively to make special arrangements in all their respective Colonies and Foreign possessions for the surrender of fugitive criminals who may take refuge within such Colony or possessions, on the basis, as nearly as may be, of the provisions of the present Treaty.

ARTICLE XI.

The present Treaty shall come into operation two months after the exchange of the Ratifications. After the Treaty shall so have been brought into operation, Article X of the Treaty concluded between the High Contracting Parties on the 9th of August, 1842, shall be considered as cancelled, except as to any proceeding that may have already been taken or commenced in virtue thereof.

Either Party may at any time terminate this Treaty on giving to the other six months' notice of its intention.

ARTICLE XII.

The present Treaty shall be ratified, and the Ratification shall be exchanged at Washington as soon as may be thereafter.

In witness whereof, the respective Plenipotentiaries have signed the same, and have affixed thereto the seals of their arms.

Done at , the day of in the year of Our Lord one thousand eight hundred and seventy-

Unidentified Draft of Proposed Treaty.

ARTICLE I.

It is agreed that Her Britannic Majesty and the United States of America shall, on requisition made in their name by their respective Diplomatic Agents, deliver up to each other reciprocally, any persons who, being accused or convicted of any of the crimes hereinafter specified, committed within the jurisdiction of the requiring Party, shall be found within the territories of the other Party:—

1. Murder, or attempt or conspiracy to murder.

2. Manslaughter.

3. Counterfeiting or altering money, or uttering counterfeit or altered money.

4. Forgery, counterfeiting, or altering, or uttering what is forged or counterfeited or altered.

5. Embezzlement or larceny.

6. Obtaining money or goods by false pretences.

7. Crimes by bankrupts against bankruptcy law.

8. Fraud by a bailee, banker, agent, factor, trustee, or director, or member or public officer of any company, and which fraud is made criminal by any law for the time being in force.

9. Abduction.

10. Child stealing.

11. Burglary or housebreaking.

12. Arson.

13. Robbery with violence.

14. Threats by letter or otherwise with intent to extort.

15. Piracy by law of nations committed on board of or against a vessel belonging to the nation asking extradition.

16. Sinking or destroying such a vessel at sea, or attempting or conspiring to do so.

17. Assaults on board such a ship on the high seas with intent to destroy life or to do grievous bodily harm.

18. Revolt or conspiracy to revolt by two or more persons on board such a ship on the high seas against the authority of the master.

Provided that the surrender shall be made only on evidence of such acts as by the law of the place where the

fugitive or person accused shall be found, constitute one or more of the offences hereinbefore enumerated, and are so established that such local law would justify his apprehension and commitment for trial if the crime had been there committed; or, in the case of a person alleged to have been convicted, on such evidence as, according to the law of the place where he is found, would prove that he had been convicted of one or more of those offences as defined by such local law.

ARTICLE II.

In the dominions of Her Britannic Majesty, other than the Foreign or Colonial Possessions of Her Majesty, the manner of proceeding shall be as follows:—

I. In the case of a person accused—

The requisition for the surrender shall be made to Her Britannic Majesty's Principal Secretary of State for Foreign Affairs by the Minister or other Diplomatic Agent of the United States, accompanied by a warrant or other equivalent judicial document for the arrest of the accused, issued by a Judge or Magistrate duly authorized to take cognizance of the acts charged against him in the United States, together with duly authenticated depositions or statements taken on oath before such Judge or Magistrate, clearly setting forth the said acts, and a description of the person claimed, and any particulars which may serve to identify him. The said Secretary of State shall transmit such documents to Her Britannic Majesty's Principal Secretary of State for the Home Department, who shall then, by order under his hand and seal, signify to some Police Magistrate in London that such requisition has been made, and require him, if there be due cause, to issue his warrant for the apprehension of the fugitive.

On the receipt of such order from the Secretary of State, and on the production of such evidence as would, in the opinion of the Magistrate, justify the issue of the warrant if the crime had been committed in the United Kingdom, he shall issue his warrant accordingly.

When the fugitive shall have been apprehended in virtue of such warrant, he shall be brought before the Police Magistrate who issued it, or some other Police Magistrate in London. If the evidence to be then produced shall be such as to justify, according to the law of England, the committal for trial of the prisoner if the crime of which he is accused had been committed in England, the Police Magistrate shall commit him to prison to await the war-

rant of the Secretary of State for his surrender; sending immediately to the Secretary of State a certificate of the committal and a report upon the case.

After the expiration of a period from the committal of the prisoner, which shall never be less than fifteen days, the Secretary of State shall, by order under his hand and seal, order the fugitive criminal to be surrendered to such person as may be duly authorized to receive him on the part of the Government of the United States.

II. In the case of a person convicted—

The course of proceeding shall be the same as in the case of a person accused, except that the warrant to be transmitted by the Minister or other Diplomatic Agent in support of his requisition shall clearly set forth the crime of which the person claimed has been convicted, and state the fact, place, and date of his conviction. The evidence to be produced before the Police Magistrate shall be such as would, according to the law of England, prove that the prisoner was convicted of the crime charged.

After the Police Magistrate shall have committed the accused or convicted person to prison to await the order of a Secretary of State for his surrender, such person shall have the right to apply for a writ of *habeas corpus*. If he should so apply, his surrender must be deferred until after the decision of the Court upon the return to the writ, and even then can only take place if the decision is adverse to the applicant. In the latter case the Court may at once order his delivery to the person authorized to receive him, without the order of a Secretary of State for his surrender, or commit him to prison to await such order.

ARTICLE III.

In the territories of the United States the manner of proceeding shall be as follows:—

I. In the case of a person accused—

The requisition for the surrender shall be made to the Secretary of State of the United States by the Minister or other Diplomatic Agent of Her Britannic Majesty, accompanied by a Warrant for the arrest of the accused, issued by a Judge or Magistrate duly authorized to take cognizance of the acts charged against him in Great Britain, together with duly authenticated depositions or statements taken on oath before such Judge or Magistrate,

clearly setting forth the said acts, and a description of the person claimed, and any other particulars which may serve to identify him.

The Secretary of State, by certificate under his hand and the Seal of his Department, to be addressed to any Justice of the Supreme Court of the United States, any Circuit Judge or Judge of the District Court of the United States in any District, any Judge of the Supreme or Superior Court of any State or Territory, and to any Commissioner specially appointed to execute the Acts of Congress for giving effect to Treaties for the extradition of criminals, shall signify the making of a requisition by the Diplomatic Agent of Her Britannic Majesty, to the end that the above-named officers, or any of them, may cause the necessary proceedings to be had that the evidence of the criminality of the accused may be heard, considered, and certified to the Secretary of State, so that, if deemed sufficient to sustain the charge, a warrant may issue for his surrender to the person who may be duly authorized to receive him on the part of the Government of Her Britannic Majesty.

When the fugitive shall have been apprehended in virtue of such warrant, he shall be brought before the Magistrate who issued it, or, if the prisoner shall so require, before any other of the Magistrates in this Article named, nearest to the place of his arrest or of his residence, as the prisoner may elect. If the evidence to be then produced shall be such as is required by the present Article, the Magistrate shall commit him to prison to await the warrant of the Secretary of State for his surrender, sending immediately to the Secretary of State a Certificate of the committal and a Report upon the case. Upon the receipt of such Certificate and Report the Secretary of State shall, with all practicable despatch, issue his warrant for the surrender of the accused to such person as may be duly authorized to receive him on the part of Her Britannic Majesty's Government, but may suspend the issue of such warrant until the termination of proceedings upon a writ of *Habeas Corpus,* if application therefor be made by the prisoner.

II. In the case of a person convicted—

The course of proceeding shall be the same as in the case of a person accused, except that the Warrant to be transmitted by the Minister or other Diplomatic Agent in

support of his requisition, shall clearly set forth the crime of which the person claimed was convicted, and state the fact, place, and date of his conviction.

ARTICLE IV.

A fugitive criminal may, however, be apprehended under a warrant issued by any Police Magistrate, Justice of the Peace, or other competent authority in either country, on such information or complaint, and such evidence, or after such proceedings as would, in the opinion of the person issuing the warrant, justify the issue of a warrant, if the crime had been committed or the prisoner convicted, in that part of the dominions of the two Contracting Parties in which he exercises jurisdiction. Any person issuing a warrant under this Article when no requisition for the surrender of the accused has been made by the Diplomatic Agent of the country from which he is a fugitive, shall forthwith make a Report of such issue to the Secretary of State, and shall at the same time send to him the evidence and information or complaint, or certified copies thereof. If within such reasonable time as, with reference to the circumstances of the case, the Secretary of State or the Police Magistrate, as the case may be, may fix, a requisition be not made for the surrender of the accused in accordance with the preceding Articles, the prisoner shall be forthwith discharged. In the meantime he shall be detained in such manner as the law of the place where he was arrested may provide.

The same rule shall apply to the cases of persons accused or convicted of any of the crimes specified in this Treaty, committed on the high seas, on board any vessel of either country, which may come into any port of the other.

ARTICLE V.

If the fugitive criminal who has been committed to prison be not surrendered and conveyed away within two months after such committal (or within two months after the decision of the Court, upon the return to a writ of *habeas corpus*) he shall be discharged from custody, unless sufficient cause be shown to the contrary.

ARTICLE VI.

When any person shall have been surrendered by either of the High Contracting Parties to the other, such person shall not, until he has been restored or had an opportunity

of returning to the country from whence he was surrendered, be triable or tried for any offence committed in the other country prior to the surrender, other than the particular offence on account of which he was surrendered.

ARTICLE VII.

No accused or convicted person shall be surrendered, if the offence in respect of which his surrender is demanded shall be deemed by the party upon whom it is made to be one of a political character, or if he prove to the satisfaction of the Police Magistrate, or of the Court before which he is brought on *habeas corpus*, or to the Secretary of State, that the requisition for his surrender has, in fact, been made with a view to try or to punish him for an offence of a political character.

ARTICLE VIII.

Warrants, depositions, or statements on oath, issued or taken in the dominions of either of the two High Contracting Parties, and copies thereof, and certificates of or judicial documents stating the fact of conviction, shall be received in evidence in proceedings in the dominions of the other, if purporting to be signed or certified by a Judge, Magistrate, or officer of the country where they were issued or taken.

Provided such warrants, depositions, statements, copies, certificates, and judicial documents are authenticated by the oath of some witness, proving the signature and the official character of the person purporting to have signed or certified the document, or by the certificate, under his official seal, of one of Her Majesty's Principal Secretaries of State, or of the Secretary of State of the United States, to the genuineness of the signature, and that the document is duly authenticated according to the law of the place where such authentication was made.

ARTICLE IX.

The surrender shall not take place if, since the commission of the acts charged, the accusation, or the conviction, exemption from prosecution or punishment has been acquired by lapse of time, according to the laws of the country where the accused shall have taken refuge.

ARTICLE X.

If the individual claimed by one of the two Contracting Parties, in pursuance of the present Treaty, should be

also claimed by one or several other Powers, on account of other crimes committed upon their territory, his surrender shall, in preference, be granted in compliance with that demand of the Diplomatic Agent which is earliest in date; unless any other arrangement should be made between the Governments which have claimed him, either on account of the gravity of the crimes committed, or for any other reasons.

ARTICLE XI.

If the individual claimed should be under prosecution, or in custody, for a crime or offence committed in the country where he may have taken refuge, or if a warrant for his arrest upon a criminal charge has been obtained in good faith, and with intent to proceed thereupon without delay, his surrender may be deferred until he shall have been set at liberty in due course of law.

In case he should be proceeded against or detained in such country, on account of obligations contracted towards private individuals, his surrender shall nevertheless take place, the injured party retaining his right to prosecute his claims before the competent authority.

ARTICLE XII.

Every article found in the possession of the individual claimed at the time of his arrest, that may be material evidence in making proof of the crime, shall be seized, in order to be delivered up with his person at the time when the surrender shall be made. Such delivery shall not be limited to the property or articles obtained by stealing or by fraudulent bankruptcy, but shall extend to every thing that may serve as proof of the crime. It shall take place even when the surrender, after having been ordered, shall be prevented from taking place by reason of the escape or death of the individual claimed.

ARTICLE XIII.

Each of the two Contracting Parties shall defray the expenses occasioned by the arrest, detention, and conveyance to its own territory of the persons whose surrender it may obtain in pursuance of the present Treaty.

ARTICLE XIV.

The stipulations of the present Treaty shall be applicable to the Foreign or Colonial possessions of the two High Contracting Parties.

The requisition for the surrender of a fugitive criminal who has taken refuge in a Foreign or Colonial possession of either Party, shall be made to the Governor or Chief Authority of such possession by the Chief Consular Officer of the other, being a Consul-General or Consul, within the jurisdiction of such Governor or Chief Authority; or, if the fugitive has escaped from a Foreign or Colonial possession of the Party on whose behalf the requisition is made, by the Governor or Chief Authority of such possession.

Such requisitions may be disposed of, subject always, as nearly as may be, to the provisions of this Treaty, by the respective Governors or Chief Authorities.

Her Britannic Majesty shall, however, be at liberty to make special arrangements in the British Colonies and Foreign possessions for the surrender of United States' criminals who may take refuge within such Colony, on the basis, as nearly as may be, of the provisions of the present Treaty.

ARTICLE XV.

The present Treaty shall come into operation months after the exchange of the Ratifications. Due notice shall in each country be given of the day. After the Treaty shall so have been brought into operation, Article X of the Treaty concluded between the High Contracting Parties on the 9th of August, 1842, shall be considered as cancelled, except as to any proceeding that may have already been taken or commenced in virtue thereof.

Either Party may at any time terminate this Treaty on giving to the other six months' notice of its intention.

ARTICLE XVI.

The present Treaty shall be ratified, and the Ratifications shall be exchanged at as soon as may be within from the date of signature.

In witness whereof, the respective Plenipotentiaries have signed the same, and have affixed thereto the seals of their arms.

Done at , the day of , in the year of Our Lord one thousand eight hundred and seventy-

Unidentified Document

ARTICLE I.

It is agreed that Her Britannic Majesty and **The United States** ~~His Majesty the King~~ of **America** shall, on requisition made in their name by their respective Diplomatic Agents, deliver up to each other reciprocally, any persons, ~~except native subjects or citizens of the Party upon whom the requisition may be made,~~ who, being accused or convicted of any of the crimes hereinafter specified, committed within the jurisdiction of the requiring Party, shall be found within the territories of the other Party:—

1. Murder, or attempt or conspiracy to murder.
2. Manslaughter.
3. Counterfeiting or altering money, or uttering counterfeit or altered money.
4. Forgery, counterfeiting, or altering, or uttering what is forged or counterfeited or altered.
5. Embezzlement or larceny. **When the sums or value abstracted is not less than £200 or 1000 Dollars.***
6. ~~Obtaining money or goods by false pretences.~~
7. Crimes by bankrupts against bankruptcy law.
8. Fraud by a bailee, banker, agent, factor, trustee, or director, or member or public officer of any company Λ made criminal by any law for the time being in force.

(9. Rape.)

10. Abduction.
11. Child stealing.
12. Burglary or housebreaking.
13. Arson.
14. Robbery with violence.
15. Threats by letter or otherwise with intent to extort.
16. Piracy by law of nations, **committed on board or against a Vessel belonging to the Nation asking the extradition**
17. Sinking or destroying a vessel at sea, or attempting or conspiring to do so.
18. Assaults on board a ship on the high seas with intent to destroy life or to do grievous bodily harm.
19. Revolt or conspiracy to revolt by two or more persons on board a ship on the high seas against the authority of the master.

Provided that the surrender shall be made only ~~when, in the case of a person accused, the commission of the crime shall be so established as that the laws of the country where the fugitive or person so accused shall be found~~ Λ would justify his apprehension and commitment for trial if the crime had been there committed; **or** ~~and~~, in the case of a person alleged to have been convicted, on such evidence as, according to the laws of the **place** ~~country~~ where he is found, would prove that he had been convicted. **of one or more of those offences as defined by such local law.**

*** This Amount might be somewhat less with regard to Canada.**

and which fraud is Query

Query: Add "Kidnapping"

Similar limitation

on evidence of such acts or omissions as by the law of the place where the fugitive or person accused shall be found, constitute one or more of the offences hereinbefore enumerated, and are so established that such local law